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ELEMENTS

OF

ECCLESIASTICAL LAW.

COMPILED WITH REFERENCE TO

THE SYLLABUS, THE "CONST. APOSTOLICAE SEDIS" OF POPE PIUS IX., THE COUNCIL OF THE VATICAN AND THE LATEST DECISIONS OF THE ROMAN CONGREGATIONS.

ADAPTED ESPECIALLY TO THE DISCIPLINE OF THE CHURCH IN THE UNITED STATES.

BY

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FORMERLY PROFESSOR OF CANON LAW, AUTHOR OF "NOTES," ETC., ETC.

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APPROBATION

OF HIS EMINENCE THE CARDINAL ARCHBISHOP OF NEW YORK.

Imprimatur.

JOANNES CARD. McCLOSKEY,
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APPROBATION OF THE AUTHOR'S ORDINARY.

DIOCESE OF NEWARK.

NEWARK, April 28, 1877.

DEAR DOCTOR:

I have heard with great pleasure that you have finished your work on canon law and that it has obtained the "Imprimatur" of his Eminence Cardinal McCloskey.

The study of the laws of the Church, in which the wisdom of the past is embodied, is always interesting and useful, not to speak of the growing importance attached to such knowledge in our midst. I therefore congratulate you on the good that you have done by compiling a summary of canon law, from approved sources, and I sincerely wish you all the success which your zeal and assiduity deserve.

I remain, Rev. dear Doctor,

Very truly yours in Christ,

✠ MICHAEL,

Bishop of Newark.

PREFACE.

WE now venture to publish, though not without great diffidence, our "Elements of Ecclesiastical Law." These pages have been written especially with reference to the discipline of the Church in this country. Hence, throughout the work, the particular laws, customs, and practices of the United States, and of countries similarly circumstanced —as Ireland, England, and Canada—are explained along with the general or common law of the Church. This we have done in order to enable the reader to compare our special discipline with that of the universal Church, and to understand the one better by comparison with the other. A slight perusal of the decrees of the Second Plenary Council of Baltimore will demonstrate that they are based on, and, as far as the condition of this country would permit, modelled after, the common law, especially as set forth by the Council of Trent.

The volume is divided into three parts. The first treats of the nature, division, etc., of ecclesiastical law; of the sources whence it emanates; and of the authorities from which it derives its efficacy. Next, the nature and force of national canon law, especially with reference to the United States, are discussed. The second part discourses, in a general manner, on ecclesiastics as vested with power or jurisdiction in the Church. Hence, it shows what is meant

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by ecclesiastical jurisdiction, how it is acquired, how lost and resigned. It therefore treats chiefly of the election of the Sovereign Pontiff, of the creation of cardinals, of the appointment, dismissal, and transfer of bishops, vicars-general, administrators of dioceses, and of pastors, particularly in this country. The third part treats, in particular, of the powers and prerogatives of ecclesiastics as clothed with authority in the Church. Hence, it points out the rights and duties chiefly of the Roman Pontiff, of the Roman Congregations, of cardinals, legates, patriarchs, primates, metropolitans, bishops, vicars-general, administrators of dioceses, pastors, and confessors.

It has been our endeavor to adapt the work to, and hence we frequently quote from, the "Syllabus" of 1864; the "Const. Apostolicae Sedis" of Pope Pius IX., published in 1869, by which the censures "latae sententiae" were limited; the latest decisions of the Roman Congregations, especially those bearing on this country; and, finally, the Vatican Council. Besides quoting, wherever appropriate, the definitions of the Council of the Vatican, we have, in their proper places, in connection with the subject-matter, added various schemes (*schemata*) and proposals (*postulata*) either discussed in or submitted to this Council. The former are drafts of decrees prepared before the assembling of the Council by a special commission, appointed by Pope Pius IX. for that purpose, and consisting of the most distinguished theologians from all parts of Christendom; the latter are motions made in the Council by bishops from different countries. We quote these drafts and proposals, not as though they had the force of dogmas or laws, but to show what laws would likely have been, or will be (if the Council reassembles), enacted by the Council of the Vatican. For both the schemes and proposals we are indebted

to the excellent work of Rt. Rev. Dr. Martin, Bishop of Paderborn, entitled "Documenta Concilii Vaticani."

The method observed in the present volume is that of Craisson in his celebrated "Manuale Totius Juris Canonici," Pictavii, 1872, ed. 3a—a work which was approved at Rome and honored by a congratulatory letter from the Holy Father. It seems scarcely necessary to state the motives that induced us to make use of the English language in the publication of a book like this. Many, if not most, of the recent works on canon law are written, not in Latin, but in the vernacular of the writer. Besides, it was thought that numerous technical and, so to say, traditional phrases so peculiar to works of this kind written in Latin might be difficult of understanding, especially in a country like ours, where ecclesiastical law has not as yet come to be universally studied.

To cause the book to be received with greater confidence, and to make sure that it contained nothing contrary to faith, good morals, and the common opinion of canonists, we cheerfully submitted it to our ecclesiastical superiors. Upon the report of the theologian appointed to examine the work the "Imprimatur" which adorns the front page was graciously granted by his Eminence the Cardinal Archbishop of New York.

The work, though of itself complete, does not embrace the entire ecclesiastical law. We shall, please God, supplement it, at an early day, by another volume, which, together with the present one, will form a complete text-book of canon law as adapted to the discipline of the Church in the United States. An appendix is added, containing the "C. Ap. Sedis," the "Instructio" of the Propaganda regarding public schools in the United States recently sent to our bishops, the profession of faith as amended by Pope Pius

IX., and the much-discussed decision of the Holy See as to when persons excused from the precept of fast by age or labor may be permitted to eat meat "toties quoties." We humbly and unreservedly submit the work to the judgment of the Sovereign Pontiff.

S. B. S.

BOOK I.

ON ECCLESIASTICAL PERSONS.

PART I.

ON THE PRINCIPLES OF CANON LAW.

CHAPTER I.

ON THE NAME, DEFINITION, AND DIVISION OF CANON LAW.

ARTICLE I.

Various meanings of the term Jus.

1. The word Jus in general signifies: 1, that which is just and equitable or in harmony with the natural, divine, and human law;[1] 2, the right of doing or omitting something, as also of obliging another person to give, perform, or omit something;[2] 3, the science of law, or jurisprudence; 4, finally, it means the laws themselves, or the body of laws; thus we say, "Corpus[3] juris canonici"—*i.e.*, the body of ecclesiastical laws;[4] Corpus juris civilis—*i.e.*, the collection of civil laws. In this latter sense chiefly we shall use the word Jus in this book.

ART. II.

Division of Law (Juris in varias suas species, distributio).

2. Law (jus) is divided, 1, into natural (jus naturale) and positive. The *jus naturale*, according to Bouix,[5] constat iis

[1] Bouix, De Princip. Jur. Can., p. 5. Paris, editio secunda.
[2] Craisson, Man., n. 2. Pictavii, 1872. [3] Bouix, l. c.
[4] Cf. Salzano, Lezioni di Diritto Canonico, vol. i., p. 10. Napoli, 1850.
[5] De Princip., p. 6.

legibus seu obligationibus quae ita necessario fluunt ex Dei et creaturarum natura ut non possint non existere. Positive law (*jus positivum*) is made up[6] of laws enacted by the free will either of God or of men.

3.—2. Positive law is subdivided into divine and human, according as laws[7] are made by the free will of God or of men.

4.—3. Human law is of three kinds: ecclesiastical or canon law, civil law, and the law of nations. First, the law of nations (jus gentium) is that which obtains among all, or nearly all, nations.[8] It is twofold: primary and secondary. The law of[9] nations, in the proper sense of the term (jus gentium secundarium), is that code of public instruction which defines the rights and prescribes the duties of nations in their intercourse with each other.[10] In this sense, the law of nations bears upon the rights of commerce, of ambassadors, etc.,[11] and is now called international law.

Secondly, civil law (jus civile), in the strict sense of the term, consists of positive laws, enacted by the civil authorities for[12] the temporal welfare of the citizens of a commonwealth. In the United States, laws are enacted: 1, by a Congress,[13] consisting of a Senate and House of Representatives—the powers of Congress extend generally to all subjects of a *national* nature; 2, by the legislatures[14] of the various States; 3, by the city councils. Other laws in force with us pertain to the common law, some to the statute law, and[15] others, finally, to the Roman or civil law.

Thirdly, ecclesiastical law (jus canonicum) is the third kind of human law; of this law we shall now treat.

[6] De Princip., p. 6. [7] Bouix, loc. c., p. 7. [8] Bouix, p. 7.
[9] Cfr. Reiff., Jus Can., Prooem., n. 31. Paris, 1864.
[10] Kent's Comm., part i., lect. i., p. 1, vol. i. New York, 1832. Cfr. Reif., l. c., n. 32. [11] Kent, l. c., p. 1–191. [12] Bouix, l. c., p. 7.
[13] Kent, l. c., vol. i., part ii., lect. xi., p. 236.
[14] Kenrick, Mor. tract. 4, n. 4. [15] Konings, Mor., n. 177.

Art. III.

What is Canon Law?

5. Canon law (jus canonicum,[16] jus ecclesiasticum, jus sacrum, jus divinum, jus pontificium) is so named because it is made up of rules or *canons*, which the Church proposes and establishes in order to direct the faithful to eternal happiness.[17] Canon law, in the strict sense of the term, comprises those laws only which emanate from an ecclesiastical authority having *supreme* and *universal* jurisdiction,[18] and in this sense it is defined: Complexio legum auctoritate Papae firmatarum, quibus fideles ad finem Ecclesiae proprium diriguntur.[19] We say, auctoritate Papae *firmatarum*, but not *constitutarum* or approbatarum; because in canon law there are many laws which pertain to the jus divinum, both natural[20] and positive; these laws were neither enacted nor, properly speaking, approved of by the Supreme Pontiff, but merely promulgated by him in a special manner.[21] Canon law, taken in a broad sense of the term, includes not only laws made by the Supreme Pontiff, but also laws enacted by legates, councils, whether national or provincial, etc. Hence canon law, in a wide sense, is defined: Complexio legum a *quocunque* potestatem legislativam possidente in bonum fidelium firmatarum.[22] Canon law, as a science, is termed "ecclesiastical jurisprudence," which, in a strict sense, is defined: The science of ecclesiastical laws, as made by the authority of the Pope. Ecclesiastical jurisprudence, in a wide sense, means the science not only of the Papal ecclesiastical laws,[23] but of *all* ecclesiastical laws.

How ecclesiastical jurisprudence differs from theology and civil jurisprudence we have elsewhere demonstrated.[24]

[16] Phillips, Lehrb., § 3, p. 3. Regensburg, 1871.
[17] Bouix, De Princip., p. 54. [18] Ib., p. 62. [19] Craisson, Man., n. 5.
[20] Bouix, l. c., p. 61. [21] Ib., l. c. [22] Ib., p. 64, 65. [23] Ib., p. 65.
[24] Notes on the Second Pl. C. Balt., n. 3.

Art. IV.

Division of Canon Law.

6. Canon law is divided:

1. Ratione auctoris, into *divine*, or that which is constituted by God, and into human, or that which is enacted by man.[25]

2. Ratione modi quo est promulgatum, into written and unwritten.[26]

3. Ratione eorum quos obligat, into common (jus commune), that, namely, which is per se obligatory on *all* the faithful; and into particular or special (jus particulare), that, namely, which is binding on *some* of them[27] only.

4. Into public and private. The jus publicum is defined: Legum systema quibus ecclesiae constitutio definitur.[28] The jus privatum, as Craisson[29] aptly writes, "versatur circa obligationes singulorum, prout distinguuntur a gubernatione ecclesiastica—*v.g.*, circa sacramenta recipienda."[30]

5. Into the jus antiquum, novum et novissimum.[31]

According to some canonists, the *old* law (jus antiquum) is that which was enacted or existed prior to the Council of Trent;[32] the new (jus novum) is that which was made by that Council; finally, the modern, or jus novissimum, is that which was published since the Council of Trent.[33] Others employ these terms somewhat differently.

For fuller explanations of the above divisions, we refer to our Notes on the Second Plenary Council of Baltimore.[34]

[25] Tarquini, Jus Eccl. Publ. Instit., p. 131. [26] Ib. [27] Bouix, l. c., p. 65.
[28] Tarquini, p. 2, n. 3. [29] Man., n. 9.
[30] Cfr. Notes on the Second Pl. C. of Balt., n. 8, p. 10
[31] Schmalzgrueber, Jus Eccl., tom. i., n. 249, 250.
[32] Bouix, De Princip., p. 66. [33] Craisson, l. c., n. 10. [34] § 3.

CHAPTER II.

ON THE SOURCES OF CANON LAW—DE FONTIBUS JURIS CANONICI.

ART. I.

How many Sources of Canon Law are there?

7. A source or fountain is that from which something takes its origin.[1] By sources of canon law we mean, therefore, the legislative authority of the Church; ecclesiastical laws[2] are said to spring from their proper source when they are enacted or promulgated by those who are vested with the law-making power in the Church.[3] In a broad sense, however, canonists designate as sources of ecclesiastical jurisprudence all instruments that contain the law itself.[4]

8. There are eight sources of canon law, in the strict sense of the term—that is, as forming the *common* and not the particular law of the Church. These sources are: 1, S. Scripture; 2, divine tradition; 3, laws made by the Apostles; 4, teachings of the Fathers; 5, decrees of sovereign Pontiffs; 6, Œcumenical councils; 7, Roman Congregations of cardinals; and 8, custom.[5]

9. To these, some add "civil laws," which, however, derive all their force, so far as they are applicable to ecclesiastical matters, solely from the authority of the Church.[6] In fact, in her judicature, the Church disdains not to

[1] Notes on the Sec. Pl. C. Balt., n. 14. Cfr. Soglia, vol. i., p. 22.
[2] Craisson, Man., n. 11. [3] Tarqu., l. c., lib. 2, n. 23, p. 130.
[4] Soglia, Inst. Jur. Publ., § 14, p. 22; ap. Notes, p. 14.
[5] Craisson, l. c., n. 16. [6] Kenrick, Mor. Tract. iv., app., n. 1.

adopt, at times, the mode of proceedings which is peculiar to civil courts.[7]

10. All these sources may ultimately be reduced to one—the authority of the sovereign Pontiff. For S. Scripture and divine tradition are not, properly speaking, sources of canon law, save when their prescriptions are promulgated by the Holy See. Again, the laws established by the Apostles and the teachings of the Fathers could not become binding on *all* the faithful or be accounted as *common* laws of the Church, except by the consent and authority of Peter and his successors. In like manner, councils are not œcumenical unless confirmed by the Pope. The Roman Congregations but exercise powers conferred upon them by the Pope. Neither can custom obtain the force of universal law save by at least the tacit sanction of the Apostolic See.[8] Hence, all the above sources may appropriately be resolved into one, namely, the authority of the Popes.

11. Reiffenstuel aptly explains:

1. "Quod Deus sit causa (source, origin) primaria, sive principalis, remota tamen et *mediata*, juris canonici, promulgans jura per Romanos pontifices . . ."[9]

2. "Proxima vero, ac immediata causa efficiens (source) ipsius (scil. juris can.) fuerunt sancti Apostoli, summi Pontifices, et Concilia."[10]

12. God himself, therefore, is the primary source of ecclesiastical law, though He is so but mediately, exercising this authority through the Popes, who are the proximate and immediate source of canon law.

We pass on to the several sources.

[7] Soglia, Inst. Jur. Publ., § 43, p. 82. [8] Craisson, l. c., n. 19.
[9] Jus Can., Prooem., n. 52, tom. i., edit. Paris, 1864. [10] Ib., n. 53.

Art. II.

I. *Of Sacred Scripture as a source of Canon Law.*

13. The S. Scriptures are divided into those of the Old and those of the New Testament. The Old Testament contains three sorts of precepts: moral, ceremonial, and judicial. The moral code of the Old Testament remains in full force in the New Dispensation; the ceremonial and judicial laws have lapsed, and become null and void.[11]

Yet arguments based upon the ceremonial and judicial injunctions of the Old Testament are of no little weight in canon law. Thus, St. Leo the Great[12] points to the dignity of the priesthood of the old law in order to show the excellence of the priesthood of the new. The same is done by St. Jerome[13] in regard to the celibacy of the clergy. The influence and bearing of the Old Testament upon questions of ecclesiastical jurisprudence are thus stated by Zallwein: Si quae sunt quaestiones controversae . . . . haud inepte, licet non convincenter, ex antiquo ad novum argumentaberis Testamentum.[14]

14. With regard to the New Testament, as a source of canon law, we cannot do better than give the words of Cardinal Soglia: Juris ecclesiastici et publici et privati, *fons* primus et praecipuus est *novum* Testamentum; sane, inquit Zallinger, quae ad jus ecclesiasticum publicum pertinent, de fundatione Ecclesiae, de institutione potestatis hierarchicae . . . ea omnia ex S. Scripturis Novi Testamenti, luculenter[15] sumuntur.

[11] Soglia, Inst. Jur. Publ., § 16. [12] Serm., 8 Pass., Dom. cap. viii.
[13] Contr. Jovin., lib. i., n. 34. [14] Ap. Soglia, l. c., § 16, p. 25. [15] Ib.

Art. III.

II. *Of Divine Tradition as a Source of Canon Law (De Divina Traditione).*

15. By tradition is meant a doctrina non scripta, sed verbis tradita. It is named doctrina non scripta, not because it is nowhere found in writing, but because it was not consigned to writing[16] by its first author. Traditions are divine and human. The former are those, quae ipsius Christi ore ab Apostolis acceptae,[17] aut ab Apostolis, Spiritu Sancto dictante, quasi per manus traditae, ad nos usque pervenerunt. Human traditions are those which emanated from the Apostles or their successors.[18] Human traditions are apostolic when they originated with the Apostles; ecclesiastical, if they come from the bishops.[19]

16. Divine traditions are binding on *all* the faithful, and hence they constitute, though only in a broad sense, one of the sources of canon law, in the strict sense of the term, or as the common and universal law of the Church.[20] Human traditions, on the other hand, regard but the discipline of the Church, and are, as a general rule, applicable to particular localities or countries only.[21]

Art. IV.

III. *The Law enacted by the Apostles as a Source of Canon Law (de Jure ab Apostolis sancito).*

17. The following enactments are attributed to the Apostles:

1. The Apostolic Creed—Symbolum apostolorum.[22] 2. Abstinence from things sacrificed to idols, and from blood, and from things strangled.[23] 3. The substituting of Sun-

[16] Ap. Soglia, p. 30, 31. [17] Conc. Trid., Sess. iv., Decret de S. Script. [18] Soglia, l. c. [19] Devoti. Inst. Can., Proleg., cap. iv., § 48. [20] Ib., § 49. [21] Ib. [22] Bouix, De Princip., p. 108. [23] Acts. xv. 29.

day for the Sabbath of the Jews, and the hearing of Mass every Sunday.[24] 4. The institution of the principal feasts—namely, Easter, Pentecost, and very probably also Christmas.[25] 5. The fast of Lent, and, according to some, the establishment of the chair of St. Peter at Rome.[26]

18. To the Apostles some writers moreover ascribe certain canons which St. Clement, the disciple and successor of St. Peter, is said to have collected and grouped together in two works; one consisting of but one volume, and entitled Canones Apostolorum; the other is made up of eight books, and named Constitutiones Apostolicae.[27]

Writers greatly differ as to the authenticity or genuineness of the "Constitutiones Apostolicae."

Biner[28] thus concludes his remarks on the subject:

a. The eight books of Apostolical constitutions are not handed down from the Apostles.

b. These constitutions, nevertheless, are very ancient, and contain many salutary things.

c. Though originally free from error, they were subsequently, in some parts, corrupted and interpolated by heretics.

The same holds good of the Canones Apostolorum,[29] at least this seems to be the more probable opinion.[30]

19. What is the significance and weight of the *jus ab apostolis* sancitum, as a source of canon law?

Cardinal Soglia thus answers:

1. Praecepta . . . quae Apostoli *coelitus afflati* proposuerunt, . . . *perpetua* . . . manere debent.

2. . . . Praecepta, quae Apostoli tamquam *rectores ecclesiarum* ediderunt. . . . haec . . . a summo Pontifice possunt . . . immutari.[31]

[24] Craisson Man., n. 22.
[25] Craisson, l. c., n. 22.
[26] Bouix, De Princip., p. 109.
[27] Craisson, l. c., n. 23 (2).
[28] App. Jur. Can., p. 2, c. 4, ap. Craiss. l. c.
[29] Bouix, De Princip., p. 120
[30] Ib.
[31] Inst. Jur. Publ., p. 29, § 18.

But how are we to know the difference between these two characteristics of the Apostles, or between the *divine* and the *Apostolic* prescriptions?

This difference is conveyed at times in the express words of the sacred writers.[32] Thus, St. Paul says: Not I, but the Lord commandeth;[33] and again: I speak, not the Lord.[34]

The context and subject-matter may also indicate the distinction.[35]

Art. V.

IV. *Teaching of the Fathers as a source of Canon Law* (*De Sententiis Patrum*).

20. On this head we quote the words of Reiffenstuel: "Dicta sanctorum Patrum sunt doctrinalia, sive magisterialia; non vero undequaque authentica seu vim legis habentia.[36]

[32] Inst. Jur. Publ., p. 29, § 18. [33] 1 Cor. vii. 10.
[34] 1 Cor. vii. 12. [35] Soglia, l. c. [36] Jus Can., Prooem., n. 77, tom. i.

CHAPTER III.

V. DECREES OF SOVEREIGN PONTIFFS (DECRETA SS. PONTIFICUM) AS A SOURCE OF CANON LAW.

ART. I.

Of the Nature of the Power of the Roman Pontiffs.

21. Various errors exist with regard to the nature of the authority inherent in the Sovereign Pontiffs.

1. Luther openly maintained that no legislative authority whatever was vested in the Pontiff.

2. Nicholas de Hontheim, suffragan of the Archbishop of Treves, having in 1763 published a book under the assumed name of Febronius, conceded to the Pope but an *accidental* power to enact or rather propose laws,[1] namely, when an œcumenical council could be convened only with difficulty. Laws thus formed could bind only when accepted by the consent of the entire Church.[2]

3. Many inconsiderate and incautious defenders of Gallicanism hold that the laws of the Sovereign Pontiffs are not binding on the faithful unless they are received or accepted at least by the bishops.[3]

22. It is, however, lawfully disputed—

a. Whether, de facto, Popes wish to make their laws obligatory on the faithful before being accepted (n. 26 seq.)

b. Whether the promulgation of Pontifical laws in Rome

[1] Bouix, De Princip., p. 167, edit. 2d.

[2] Phillips, Jus Can., vol. iii., § 136, p. 369, edit. 1850.

[3] Bouix, l. c., p. 167 (3).

is sufficient, or whether the publication of them in the various provinces or countries of Christendom is requisite[4] (n. 35).

23. Having premised this, we shall now show that the Roman Pontiffs are possessed of supreme legislative power, capable of being exercised without the consent of either bishops, priests, or faithful. The first part of this thesis is formulated thus: S. Pontifex immediate accepit ab ipso Christo, et ex vi institutionis, potestatem legislativam in universalem Ecclesiam (sunt ipsamet Suarezii verba).[5]

This proposition maintains—

1. That legislative power over the entire Church is vested in the Roman Pontiff. This is de fide.[6]

2. That the Pope has received the power *immediately* or *directly* from Christ himself, which at present is also de fide,[7] as was defined in the late Vatican Council.[8]

24. We pass over the proofs generally taken from S. Scripture, the Councils of Lyons and Florence, and confine ourselves to the definitions of the Council of the Vatican. It defines:

1. "If . . . any one shall say that blessed Peter . . received directly and immediately from our Lord Jesus Christ only the primacy of honor, and not that of true and real jurisdiction, let him be anathema.[9]

2. "If . . . any one shall say . . . that the Roman Pontiff is not the successor of blessed Peter in this primacy, let him be anathema.[10]

3. "If any one shall say that the Roman Pontiff holds . . . not full and supreme power of jurisdiction over the entire Church . . . also in those (things) which pertain to the discipline and government of the Church spread throughout the whole world; . . . or that this power

[4] Craisson, Man., n. 27. [5] Ap. Bouix, l. c., sect. ii., cap. i., p. 168. [6] Ib.
[7] Conc. Vaticanum i., sess. iv., cap. i. [8] Craisson, Man., n. 28.
[9] Sess. iv., cap. i. [10] Ib., cap. ii.

is not ordinary and immediate . . . let him be anathema."[11]

25. These canons prove, therefore, *a*, that blessed Peter received directly from Christ the primacy of jurisdiction; *b*, that the Roman Pontiff is the successor of St. Peter; *c*, and, therefore, that the Pope has, in the person of St. Peter, received directly from Christ the primacy of jurisdiction over the whole Church.

But is the legislative power included in and inseparable from that of jurisdiction? Most certainly. For, writes Bouix, "Potestas *legislativa* Romani Pontificis inseparabilis est ab ipsius potestate jurisdictionali in universam Ecclesiam. . . . Ille siquidem solus *legem ferre* potest in alium, qui super ipsum jurisdictionem habet."[12]

Art. II.

Of the Acceptance of Pontifical Laws (De Acceptatione Legum Pont.)

26. We now come to the second part of the thesis laid down above. We here ask: Are Pontifical laws, even when not accepted by the faithful, nevertheless obligatory on them?

Two questions must be distinguished; one of fact, namely, whether Pontifical laws, though not accepted or approved of by the faithful, are yet binding in conscience—in other words, is it the intention or will of the Roman Pontiffs that their laws should oblige in conscience even before being accepted?

This is an open question, and may be, in fact is, lawfully controverted among Catholic writers.[13]

27. The other question is that of right: Whether Popes can or have the power to bind in the above manner? The

[11] Conc. Vat. i., sess. iv., cap. iii.

[12] De Princip., p. 169.

[13] Craisson, Man., n. 29.

affirmative, namely, that the Popes have this power, if they choose to exercise it, is indubitable; nay, according to Suarez, de fide.[14] As to the question of right, we lay down the following proposition: Romani Pontifices possunt si velint, legibus suis universos fideles ligare absque cujuscunque acceptatione.[15]

This proposition is proved, 1, from the preceding thesis. It was there shown that the Roman Pontiff is invested with a legislative power in the proper sense of the term. Now, if the Pope could bind those persons only who of their own free will accepted his laws, he would evidently be possessed of no power to enact laws. In fact, the Pontiff, in such an hypothesis, would have no greater authority than any simple layman or even woman, to whom anybody could be subject if he so chose;[16] 2, from S. Scriptures;[17] 3, the constant practice[18] or custom of the Church; 4, and from councils;[19] 5, from the very essence of law.[20] Law, in fact, means the *precepts* dictated by competent authority for the governance of man.[21] A precept essentially differs from a mere counsel in that it is obligatory. Hence, if the Roman Pontiff could merely *propose* a law, but not render it binding, he would be no lawgiver.[22]

28. This proof is thus stated and summed up by Bouix: "Lex omnino pendens a subditorum acceptatione ut obliget, est lex non ligans; atqui lex non ligans non est lex . . . ergo repugnat vim legis obligatoiram a subditorum acceptatione pendere."[23]

29. The difference between the power to propose laws and that of enacting them is, to a certain extent, illustrated in the case of the President of the U. S.

[14] De Lege, l. iv., c. xvi., n. 2.
[15] Bouix, De Princip., p. 191, edit. Parisiis secunda.
[16] Ib., p. 193.
[17] Ib., p. 193.
[18] Ib., p. 194.
[19] Ib.
[20] Ib., p. 195.
[21] Blackst., Introd., sect. ii., p. 5, edit. London, 1819.
[22] Bouix, l. c., p. 195.
[23] De Princip., p. 196.

The duties of the President consist in recommending to their (Congress) consideration such measures (or laws) as he shall judge necessary or expedient.[24] On the other hand, by the Constitution[25] (U. S.), all the legislative powers therein granted are vested in a Congress, consisting of a Senate and House of Representatives.[26] No parallel, therefore, can be drawn between the power of the Roman Pontiffs and that of our chief executive. For the Roman Pontiffs, as was seen, have not only the power to recommend or propose laws, but that of making them.

30. From what has been said, we draw the following conclusions:

1. The Roman Pontiff, if he so chooses, may impose laws, obligatory on all the faithful, without the consent or acceptation of bishops.[27] For, if the force or obligation[28] of the laws in question depended on the acceptance or approval of the bishops, then it would follow, "quod Pontifex non legem proprie conderet, sed proponeret."[29]

2. A fortiori, Pontifical enactments, in order to be binding, need not be accepted by the second order of the clergy—*i.e.*, the priests.

3. Pontifical laws, moreover, become obligatory without being accepted or confirmed by secular rulers. The contrary opinion is thus condemned by the Vatican Council:[30] "Reprobamus illorum sententias, qui hanc Supremi Capitis cum Pastoribus et gregibus communicationem licite impediri posse dicunt, aut eandem reddunt saeculari potestati obnoxiam; ita ut contendant, quae ab apostolica sede vel ejus auctoritate, ad regimen Ecclesiae

[24] Kent's Com., vol. i., part ii., lect. xiii., p. 288, edit. New York, 1832.
[25] Art. i., sect. i. [26] Kent, l. c. x., p. 222. [27] Craisson, Man., n. 30.
[28] Notes on the Sec. Plen. C. Balt., n. 30, p. 25, edit. 1874.
[29] Soglia, vol. i., p. 49, Neapoli, 1864. [30] Sess. 4, cap. iii.

constituuntur, vim . . non habere . . nisi potestatis saecularis placito confirmentur."[31]

31. The nature of the Placitum regium has been elsewhere explained by us.[32]

The Government of the United States has never claimed any power to review Pontifical documents or forbid their publication.

Art. III.

Of the Exercise of the Pontifical Authority.

32. In the preceding paragraph we discussed the question of right; we now come to that of fact. We therefore ask: What is to be thought[33] of the opinion of those who maintain that the Roman Pontiffs do not, *de facto*, wish that their laws should bind before being accepted? We answer in the words of Bouix: "Sententia tenens quasdam leges pontificias ad disciplinam spectantes, de facto non statim obligare, antequam acceptentur, modo hoc tribuatur liberae voluntati summo Pontificis, *licita* est, et sustinetur a multis doctoribus Catholicis."[34]

33. Now, it may be asked: In what cases do the Roman Pontiffs not intend to render their laws obligatory before being accepted?[35]

To this we answer: In matters of discipline, the decrees of the Roman Pontiffs may be less adapted to one place than to another.[36] In such a case, the ordinary of a diocese not only may, but even ought,[37] to communicate to the Pope the adverse circumstances, and expose the reasons why the law should not be enforced.

34. Note, however, this has reference to certain matters

[31] Cfr. Craisson, Man., n. 33. [32] Notes, n. 32.
[33] Craisson, Man., n. 35. [34] De Princip., p. 219. [35] Craiss., Man., n. 36.
[36] Notes on the Sec. Plen. C. Balt., n. 31, p. 26.
[37] Bened. XIV., De Syn. Dioec., lib. ix., cap. viii., edit. Prati, 1844.

of discipline only, for, in questions pertaining to faith and morals, the judgment of the Pontiff is irreformable.[38] We say, *certain* matters of discipline; for in those matters of discipline which relate to sacred rites, the sacraments, the life and conduct of the clergy, Papal laws are not subject to, or changeable at, the judgment of bishops.[39]

Art. IV.

Of the requisite Promulgation of Pontifical Laws.

35. Promulgation is thus defined by Bouix: Promulgatio dicitur, enuntiatio legis sat publice facta, ut moraliter possit ad totius communitatis notitiam pervenire.[40]

No law binds save when sufficiently promulgated or made known.[41] With regard to civil laws, Blackstone writes: A resolution of the legislature is no law till this resolution be notified.[42]

36. Again, a law may be promulgated in various ways . . the *mode of* notification (or promulgation) being immaterial, provided only that it be sufficiently public and perspicuous.[43]

It is, therefore, not indispensable or requisite that the law should be made known to each individual.[44]

37. It is a question agitated among writers, whether it is sufficient that Papal constitutions be published at Rome, or whether they ought to be promulgated in each province or state[45] and diocese.

On this head, a twofold opinion exists. The first affirms that the publication in every country and diocese of the world is essential. This theory is advocated by Natalis, Alexander, Tournely, Cabassut, etc., etc.

[38] Bened. XIV., De Syn. Dioec., lib. 9, cap. 8, n. 3. [39] Ib. [40] De Princip., p. 230.
[41] Craisson, n. 40. [42] Comm., Introd., sect. ii., p. 8. [43] Ib.
[44] Craiss., n. 40. [45] Notes on the Sec. Pl. C., Baltimore, n. 25, p. 21.

Some writers even went so far as to maintain that this mode of promulgation was required by the law of nature.[46]

This opinion, by reason of its favoring the view that bishops have the right not to accept or promulgate Pontifical documents, has been zealously embraced and defended by De Marca, Van Espen, Zallwein, etc.[47]

The arguments alleged in support of this opinion may be seen in Bouix, De Princip., and Craisson.[48]

38. The second opinion asserts that the promulgation which takes place in Rome is sufficient.[49] This opinion is called by St. Alphonsus the *sententia valde communior et probabilior;* the first opinion has few advocates at present.

Nor is this opinion contrary to the dictates of natural law. For that promulgation alone is requisite by which the knowledge of the law will easily and conveniently reach the entire Church spread throughout the world;[50] now, such is the promulgation made in Rome. For, with our modern facilities of communication, with our cables and newspapers, a law which is enacted and promulgated in Rome is made known all over the world in a very short time.

Again, our postal arrangements are such as will enable the Roman Pontiff easily to transmit authentic copies of the law to all nuncios, archbishops, and bishops of Christendom.[51]

39. In reality, as things are at present, newspapers render it impossible to prevent the publication of laws in any diocese. Opposition to the law on the part of the bishop would but create scandal.[52] A formal promulgation in every diocese is therefore superfluous.

40. Civil governments also have for the greater part discarded the practice of promulgating their laws in each province. In France, the Code Napoléon . . . declared

[46] Ap. Bouix, De Princip., p. 232, 233 seq. [47] Ib., p. 197. [48] Man., n. 42.
[49] Ib., n. 43. [50] Bouix, l. c., pp. 234, 235, 236. [51] Ib., p. 236. [52] Ib., p. 237.

that laws were binding from the moment their promulgation *could* be known.[53] Although Pontifical laws become obligatory throughout the entire Church when promulgated in Rome, yet they bind only after a certain space of time has elapsed during which the respective communities may receive notice of the enactment.

41. Hence: Are Pontifical constitutions of no force save two months after their promulgation?

There are three opinions: The first holds that the law binds *immediately* after its promulgation; the second maintains that it becomes obligatory immediately upon those who reside in the Curià or about Rome, but upon others only after the lapse of a certain time, to be computed according to the distance of place; the third finally argues[54] that unless the time is fixed by the law, no person whatever falls under enactments save after two months from the date of their promulgation. St. Liguori terms this the more probable opinion.[55]

42. When do our civil laws begin to bind?

We answer: "A statute is to operate from the *very day* it passes, if the law itself does not establish the time."[56]

Kent, however, very justly observes:

1. It would be no more than reasonable and just that the statute should not be deemed to operate . . . until the law was duly promulgated . . .

2. . . . However, no time is allowed for the publication of the law before it operates when the statute itself gives no time.[57] . . .

3. . . . The New York Revised Statutes have . . . declared . . . that every law, unless a different time be prescribed therein, takes effect throughout the State on, and not before, the twentieth day after its final passage.[58]

[53] Kent, vol. i., p. 458. [54] Craisson, Man., n. 46. [55] Lib. I., n. 96, seq.
[56] Kent, Com., vol. i., p. 457, 458. Edit. New York, 1832.
[57] Com., vol. i., p. 458. [58] Ib., p. 459.

43. Finally, we call attention to the distinction between the notification and promulgation of laws.

Some authentic notification, it seems, or official announcement, should be made in each province and diocese. This official announcement, however, is not identical with promulgation. Bishops, on receipt of an authentic copy of the law from Rome, notify or inform the clergy and faithful under their charge of the promulgation of the law in Rome, but they do not, save in a broad sense, promulgate the law.[59]

Q. Are bishops bound to promulgate, or to see that others observe, all Pontifical enactments which are promulgated in Rome?

A. Sylvius[60] thus answers: Teneri (Episcopos) curare ut observentur quando Pontifex significat se velle quod lex sua ubique obliget, etiam absque promulgatione alibi facta. Non tenentur tamen curare ut promulgentur nisi, vel mandatum pontificium ad eos dirigatur, vel rationabiliter judicent promulgationem in suis dioecesibus esse necessariam.

Art. V.

Various Kinds of Apostolic Constitutions or Letters.

44. Apostolic letters or constitutions are divided:

I. By reason of their *subject-matter* (*quoad materiam*) into, *a*, *common ordinances* (ordinationes communes), which enact or establish something for the *entire* Church, or at least for a considerable part of it; *b*, into *particular ordinances* (ordinationes particulares), which lay down prescriptions for a private person only, or in some transient affair.[61]

45. 1°. *Common ordinances* are made up of constitutions, properly so-called, decrees, decretal epistles, and encyclicals.[62]

a. *Constitutions* (constitutiones), properly speaking, are

[59] Bouix, De Princip., p. 242.

[60] Ap. S. Liguor., lib. i., n. 96. Cfr. Craiss., Man., n. 44.

[61] Bouix, De Princip., pars. ii., sect. ii., cap. vii. [62] Ib

those Apostolic letters which ordain, in a permanent manner, something for the *entire Church*, or part of it.[63]

b. By *decrees* (decreta) are meant the constitutions just mentioned, when issued by the Roman Pontiff not in reply to questions addressed to the Holy See,[64] but motu proprio, with or without the advice of the cardinals.[65] The term "decree" is, however, not unfrequently used to denote Pontifical laws or enactments of every description.[66]

c. Decretal epistles (decretales epistolae responsa) differ from decrees only in that they are dictated[67] in reply to questions of bishops or other persons.[68] They have the force of general laws, being framed for the purpose of deciding in *similar* cases, save when something is ordained dispensatively (dispensative).[69]

d. Encyclicals are the above-mentioned constitutions or decretals when addressed to the *bishops* of the whole world or of some country. Encyclicals are generally made use of by Popes in order to determine some point of doctrine or abolish abuses, as also to introduce uniformity of discipline.[70]

46. 2°. By *particular ordinances* (ordinationes particulares) are meant those letters in which the Roman Pontiff replies to persons who either ask for some favor or report on some particular affair, or request directions for a transient object or private individual. These letters are named *rescripts* (rescripta).[71]

47. II. *Quoad formam*, or viewed as to their *form*, Pontifical letters or constitutions are divided into Bulls and Briefs, for the Pontifical letters which are mentioned above are issued in the form either of a bull (bulla) or of a brief (breve);[72] though, at present, frequently without either form.

48. *Bulls*, so-called from the seal, whether of gold, silver,

[63] Bouix, De Princip., p. 273, pars. ii., sect. ii, cap. vii. Cfr. Craisson, Man., n. 47. [64] Ib. [65] Notes on the Sec. Pl. C. Balt., p. 18.
[66] Bouix, De Princip., p. 274. [67] Notes on the Sec. Pl. C. Balt., p. 18, n. 21.
[68] Bouix, l. c., p. 274. [69] Ib. [70] Ib. (4°) [71] Ib., p. 274. [72] Ib., p. 275.

or lead, which is appended to Pontifical instruments, differ from briefs chiefly as follows: 1, Haec (briefs) pro leviori-bus, illae (bullae) pro gravioribus negotiis dari solent; 2, brevia latino eleganti charactere, bullae charactere longo-bardico aut teutonico scribuntur; 3, in brevibus servatur orthographia ordinaria; in bullis non adbibentur puncta . . 4, bullae[73] *incipiunt*, Pius servus servorum Dei . . . a capite[74] versiculi; in brevibus vero inscribitur sub *forma tituli*,[75] Pius Papa IX.; 5, in bullis data (date of letter) tem-poris apponitur cum longiori formula; cum breviori in brevibus; 6, brevia expediuntur per cardinalem a secretis brevium; bullae alio modo; 7, pro bullis crassae et sub-obscurae membranae; pro brevibus albae et subtiles adhi-bentur.[76]

Briefs, moreover, are given sub annulo piscatoris—under the Fisherman's Ring.

Art. VI.

Of Rescripts (*De Rescriptis*).

49. For definition of rescripts, see n. 46. It is asked: Have rescripts the force of law?

We answer: They have the force of law, *inter partes*[77] —that is, among those only for whom they were given.[78] Thus, a rescript conceded to a plaintiff, granting a trial *without appeal*, is *equally* beneficial to the defendant, who may wish to bring a counter-action against the plaintiff.[79]

[73] Bulls are generally not signed or subscribed by the Pope, but only by several officials. Consistorial bulls are signed by the Pope. Phillips, vol. iii., p. 646.

[74] *i.e.*, in the first line, and not in the shape of a superscription, title, or heading. Bulls have no heading. Cfr. Phillips, Jus. Can., vol. iii., sect. 154, p. 645. Edit. Ratisbon, 1850.

[75] *i.e.*, as a heading or superscription. [76] Bouix, De Princip., p. 277.

[77] Reiffenst., lib. i., tit. iii., n. 9. Edit. Paris, 1864.

[78] See our notes on Sec. Pl. C. Balt., n. 23, p. 19. See also Devoti Pro-legom., § xxxvi. Edit. Leodii, 1860. [79] Reiffenst., l. c., n. 10.

50. Though rescripts have not of themselves the efficacy of universal laws, yet they may serve as precedents, and be applied to cases[80] of a similar kind, and hence they sometimes acquire indirectly, or in consequentiam, the force of common laws.

51. How many kinds of rescripts are there?

We answer, 1. Some rescripts are contra legem, others praeter legem, and others finally secundum legem.[81]

2. Rescripts are again divided into rescripta gratiae and into rescripta justitiae. The latter, termed also rescripta ad lites, are those in which, for instance, Papa causae ad se devolutae judicem delegatum constituit;[82] rescripta gratiae or ad beneficia dicuntur ea, quae dantur ad obtinenda beneficia ecclesiastica, et alias consimiles gratias.[83]

52. How are rescripts vitiated?

We answer: In a threefold manner.

1. By defect in persons (vitio personarum)—that is, when parties are incompetent either to give or to obtain rescripts.[84]

2. By defect in petitions (vitio precum), which either suppress and conceal the truth or contain a falsehood—that is, are either surreptitious or obreptitious.[85] In canon law, the terms subreptio and obreptio are interchangeable and used synonymously,[86] so far as concerns the matter under discussion.[87]

3. *By defect in the form* (vitio formae), rescripts are finally made void when, namely, the rescript was not properly issued[88]—*e.g.*, when some important word or sentence is erased,[89] etc.

53. Rescripts are vitiated by defect in the supplication in the following cases:

[80] See our Notes, p. 19, n. 23. Cfr. Reiffenst., l. c., n. 10, 12, 13, 14.
[81] Reiffenst., l. c., n. 22. [82] Ib., n. 27, 28. [83] Ib., n. 29.
[84] Soglia, Jus Publ., § 29. Edit. Neap., 1864. [85] Ib., § 30.
[86] Reiff., lib. i., tit. iii., n. 155. [87] Cfr. Soglia, l. c., § 30. [88] Ib., § 29. [89] Ib., § 31.

1. Qui *fraude* vel *malitia* falsitatem exprimunt, aut supprimunt veritatem . . . nullum ex iis litteris (rescriptis) commodum consequantur.[90]

2. Subreptio ex *ignorantia*, vel *simplicitate*, si fuit causa obtinendae *solius formae* rescripti, non vitiat *substantiam* ipsius rescript.[91]

3. Si cessante subreptione Papa *nullo modo* dedisset rescriptum, vitiatur illud in totum, licet ex *ignorantia* vel *simplicitate*, veritas fuerit tacita vel falsitas suggesta.[92]

54. How are rescripts executed or carried into effect?

Soglia thus answers: Rescripta Apostolicae sedis nonnisi *viris in ecclesiastica dignitate* constitutis, vel canonicis ecclesiarum cathedralium *ex-sequenda* committi solent.[93]

It is incumbent upon the officials or dignitaries to whom the task is entrusted of executing or giving effect to rescripts to ascertain whether preces veritate nitantur; and in case the facts or prayers upon which the rescript is based are without foundation, these officials should so inform the Pope before giving effect to the Papal letters.[94]

55. *Q.* How do rescripts lapse?

A. 1. *Rescripta justitiae* lapse at the death, resignation, translation, or deposition of the person conceding them, if at the time the cause or trial had not yet begun[95] (re adhuc integra); but not if proceedings had already commenced in the case (re non amplius integra), *v.g.*, by the citation of the parties to the suit, made before the demise of the person who granted the rescript.[96]

2. As to rescripta gratiae, we must distinguish between the rescripta gratiae that contain a gratiam factam and those containing merely a gratiam faciendam.[97] *a.* Rescripts containing a gratiam jam factam do not, even though *res* est

[90] Cfr. Soglia, l. c., § 30. [91] Ap. Reiffenst., l. c., n. 159. [92] Ib.
[93] Jus Publ., § 32. [94] Phillips, Jus Can., vol. iii., § 155, p. 654.
[95] Reiffenst., lib. i., Decret. tit. 3, n. 232, 235. [96] Ib., n. 238, 241.
[97] Craisson, Man., n. 71.

adhuc integra, expire with the decease of the person conceding them.[98] *b.* Rescripts that confer a gratiam faciendam or a gratiam concessam non in proprium recipientis litteras, sed in alterius[99] duntaxat favorem, lapse at the death of the person giving them, si res est adhuc integra.

56. Now, rescripts contain a gratiam factam when, *v.g.*, power is given in them to an individual or a religious community to[100] grant dispensations, to absolve, first, either persons in general; or, second, persons in particular—*i.e.*, determinate persons, provided the person[101] obtaining the rescript in the second case is constituted the *executor necessarius*—*i.e.*, is commanded, *v.g.*, to grant a dispensation to Titius if he knows the petition of Titius to be grounded in truth. Such are ordinarily dispensations for marriages.

57. On the other hand, rescripts contain a gratiam primum faciendam when they authorize the party obtaining the rescript to confer, *if he deems it* proper or desirable, a favor (*v.g.*, a dispensation) upon a determinate person; *v.g.*, if the Apostolic letters say: Dispenses cum Titio, conferas Caio beneficium, si volueris, si expedire judicaveris.[102] In this case, the person who obtains the rescript is constituted the *executor voluntarius*, and the gratia contained in the rescript is not *jam facta—i.e.*, completely or absolutely[103] bestowed by the Pope, but is merely gratia facienda—*i.e.*, to be imparted conditionally, namely, if the executor thinks proper to do so.

58. 3. Rescripts, in general, may also lapse, by being[104] revoked either tacitly or expressly (revocatione) and by being renounced or refused (renuntiatione) by those persons in whose favor they were made.[105]

[98] Reiff., l. c., n. 250. [99] Ib., n. 251.
[100] Ib., n. 254. [101] Ib., 256, 257. [102] Ib., n. 258.
[103] Leuren, Forum Eccl., lib. i., Decret. tit. 3, Qaest. 363. Augustae Vindelicorum, 1737. [104] Ib., Qu. 361. [105] Ib., Qu. 360.

CHAPTER IV.

VI. ON THE DECREES OF COUNCILS AS FORMING A SOURCE OF CANON LAW.

ART. I.

Of Œcumenical Councils.

59. Councils in general are defined: "Coetus auctoritate legitima congregati ad tractanda negotia ecclesiastica, de quibus Episcopi pronuntiant."[1]

It is a mooted question whether councils are of divine or ecclesiastical institution. Œcumenical councils are not absolutely necessary to the Church, though they are very useful.[2]

Councils are divided into œcumenical, national, provincial, and diocesan.[3]

60. What are the essential conditions or requisites of an œcumenical or general council?

We answer:[4]

1. An œcumenical council must be convoked by the authority of the Roman Pontiff, or, at least, with his consent, and be presided over by him or his legates.[5]

2. All the Catholic bishops of the world are to be called or invited, though it is not indispensable that they should *all* be present.[6]

3. The acts of the council must be confirmed or approved by the Pope.[7]

[1] Bouix, ap. Craisson, Man., n. 77. [2] Craisson, l. c. [3] Ib., n. 79.
[4] See our Notes on the Sec. Pl. C. Balt., n. 33, p. 27.
[5] Devoti, Inst. Can. Prolegom., § xxxviii. Leodii, 1860. [6] Ib. [7] Ib.

61. Who have the right of suffrage at general councils?

We answer:

1. Bishops alone are jure divino,[8] possessed by virtue of *their office* (ex officio) of the right of decisive or definitive suffrage or vote[9] (jus suffragii decisivi). Hence, bishops assembled in general councils are not merely counsellors but true judges—non consiliarii[10] sed veri judices sunt.

2. Cardinals who are not bishops, abbots, and superiors-general of religious orders exercise this power also, but only by virtue *of privilege*[11] (ex privilegio).

3. Procurators of bishops, who are legitimately absent, received the faculty of casting consultive votes (suffragium consultivum) from Pope Pius IV.[12]

62. What is the canonical mode or method to be observed in the celebration of œcumenical councils?

We reply:

1. There must be freedom of discussion, or liberty in decisions and judgments. All acts extorted by fear and violence are (ipso jure) null and void.[13]

2. No fraud or deception must be practised on the Fathers.[14]

3. There must be, moreover, a sufficient examination into the questions submitted to the council.[15]

Once, however, the council has defined a question, no doubt can any longer be entertained[16] as to whether the council used sufficient care and deliberation in its definitions.

63. What is the authority of œcumenical councils?

We answer: The decrees of general councils have the efficacy of universal laws, and constitute, therefore, one of the sources of canon law, in the strict sense of the term.[17]

64. *Q.* Is the Council of Trent received in the United States (*quoad disciplinam*)?

[8] Soglia, tom. i., § 35.
[9] Craisson, l. c., n. 78.
[10] Soglia, Inst. Jur. Eccl., tom. i., § 35.
[11] Ib., p. 67.
[12] Ib.
[13] Ib.
[14] Ib.
[15] Ib.
[16] Ib.
[17] Craisson, l. c., n. 89.

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A. We say "quoad disciplinam"[18] since no one will doubt that, in matters of faith, the Council of Trent fully obtains with us.

We now give a direct answer: 1. The disciplinary law of the Council of Trent is not, as *a whole* or in its entirety, in force with us, though *some* of the decrees of Trent are made obligatory throughout this country by the Fathers of the Second Plenary Council of Baltimore.[19]

2. Again, the Fathers frequently express their sincere desire of approaching and conforming to the prescriptions of the general law of the Church, and therefore of the Council of Trent.[20]

3. Kenrick writes: In Conciliis Baltimorensibus passim allegantur (Decreta Concilii Tridentini), licet *universa* (decreta) non sint speciali decreto promulgata;[21] and in another place this author says that "Concilii Tridentini decreta passim apud nos [*i.e.*, in U. S.] laudentur, quamvis non sint specialiter et universim promulgata."[22]

Art. II.

Of Particular Synods, whether National, Provincial, or Diocesan.

65. National councils are those to which the Bishops of a whole nation are summoned.[23] These councils are convoked by the Patriarch, Primate, or other dignitary having competent authority.[24]

The Archbishop of Baltimore cannot convene national or plenary councils by virtue of the praerogativa loci,

[18] Cfr. Craisson, l. c., n. 93.

[19] See Acta et Decreta, n. 56. Cfr. Conc. Trid., sess. xxiv., cap. 2, De Ref.

[20] Concil. Pl. Balt., ii. passim, n. 59, p. 47.

[21] Mor. Tract iv., n. 15.

[22] Ib., Tract xviii., n. 144.

[23] Craisson, Man., n. 80.

[24] Devoti, Prolegom., § xli.

attached to the See of Baltimore.[6] As a matter of fact, however, the Holy See appointed the Archbishop of Baltimore Apostolic Delegate to assemble and preside over the two national councils, so far, held in this country: the one in 1852, the other in 1866.

The Roman Pontiffs were wont to hold national synods of Italy down to the seventh or eighth century. Such councils were also customary in Africa.[26]

66. Councils are named provincial when the Bishops of a province are *called* together by the Metropolitan,[27] though it is not essential that they should all be present at the council.

67. How often are provincial councils to be held?

We answer: 1. In the first centuries of the Church, they were celebrated twice a year.[28] 2. The Third Œcumenical Council of Constantinople prescribed that these councils should take place *once* a year. 3. Finally, the Fifth Lateran Council, as well as that of Trent,[29] ordained that they should be convened once every three years.[30]

68. It may be observed that but very few provincial councils were held within the last three centuries in France, Germany, Austria, Spain, and even in Italy, save those of Milan under St. Charles Borromeo. Hence it would appear that the Holy See tacitly consents to this custom.[31]

69. In the United States, provincial councils and diocesan synods are more numerous. This is owing in no small degree to the fact that our government has never thrown—in fact, could not throw—any obstacles in the way; while in Europe the governments but too frequently interfered with these meetings.[32] The law enacted by the Council of Trent—to wit, provincial councils should be held every

[25] Notes on the Sec. Pl. C. Balt., n. 34, p. 28.
[26] Soglia, l. c., tom. i., § 37. [27] Craiss., l. c., n. 80. [28] Ib., n. 81.
[29] Sess. 24, cap. 2, De Ref. [30] Bouix, Concil. Provinc., p. 420–425.
[31] Craisson, l. c., n. 81. [32] Cfr. Phillips, Jus. Can.

three years—should be accurately observed throughout the United States.[33] In parts of the West Indies, these councils are held once every four years.[34]

70. Q. What persons, according to the Second Plenary Council of Balt., should be present at and therefore called to provincial councils?

A. 1. These persons: 1, all the Bishops of the province;[35] 2, administrators of dioceses appointed by the Holy See; 3, procurators or representatives of Bishops lawfully absent; 4, administrators of dioceses, sede vacante; 5, Vicars-Apostolic who exercise jurisdiction within the province. All[36] these have, jure communi, a decisive voice or vote.

2. The following, moreover, are to be invited, but have[37] only a consultative vote: 1. Auxiliary Bishops; they may, however, as also other titular Bishops having no ordinary jurisdiction in the province, receive[38] the right of casting a decisive vote by the unanimous consent of the Fathers of the Council. 2. Cathedral chapters[39] should be invited to be present through their delegates or procurators, chosen by themselves. As, in the U. S., the bishop's council, in a measure, takes the place[40] of the chapter, these councils might be allowed a representation in provincial councils; one of the councillors of each bishop, selected by the council itself, but not by the bishop, might be admitted to these councils. 3. Provincials of regulars. 4. Rectors of major seminaries, si ita videatur patribus. 5. Abbots in the U. S., though not possessed of a "territorium proprium," are[41] usually invited, nay, have exercised the right of decisive vote,[42] although, by virtue of the jus commune, those abbots only who are vested with quasi-episcopal[43] jurisdiction have the

[33] Conc. Pl. Balt., ii., n. 56, 57. [34] Coll. Lac., l. c., p. 1103.
[35] Conc. Trid., sess. 24, cap. 2, De Ref. [36] Conc. Pl. Balt., ii., n. 60.
[37] Ib. [38] Ib., n. 2. [39] Ferraris, v. Concilium, art. 2, n. 15.
[40] Concl. Pl. Balt., ii., n. 70, 71. [41] Cfr. Craisson, Man., n. 82.
[42] Ap. Coll. Lac., tom. 3, pp. 546, 594, 1415, n. 20. [43] Ferraris, l. c., n. 17.

right of decisive vote. 6. Finally, those persons whose services the[44] bishops wish to make use of—*v.g.*, those priests whom bishops usually take along with them to the council, as their theologians[45] or canonists. Besides, all priests or ecclesiastics who think themselves injured[46] may present their grievances to the council. Laymen are sometimes invited to attend some of the sittings, either to act as notaries, as was done in several of the Prov.[47] C. of Westminster, England; or also in order to explain certain matters: thus, several eminent lawyers were admitted to one of the public sittings[48] of the First Prov. C. of Baltimore, in order to explain certain points of the civil law in relation to Church property.

71. In Prov. C., matters are settled by a majority of votes. Metropolitans have no preponderating voice, even when there is a tie.[49]

72. Are the decrees of Prov. C. to be submitted to the Holy See before being promulgated?

We answer: 1. Provincialium vero; ubivis terrarum illa celebrentur, decreta ad se mitti praecipiet (Congr. Concilii) eaque singula expendet et recognoscet.[50]

2. Non quidem hoc statuit Pontifex, ut postea confirmationem reportent (hujusmodi decreta) a sede apostolica, sed ut corrigatur, si quid . . . in iisdem . . . minus rigidum . . . deprehendatur . . . non semel tamen accidit . . . per apostolicos litteras confirmari.[51]

3. It is lawful to appeal from these councils when they are not approved in forma specifica,[52] since it sometimes happens that these councils, even after being corrected by the

[44] Conc. Pl. Balt., ii., n, 60.
[45] Coll. Lac., l. c., p. 1415, n. 20.
[46] Ferraris, l. c., n. 26.
[47] Ap. Coll. Lac., vol. 3, pp. 974, 999, 1026, 1066.
[48] Ib., p. 15.
[49] Craisson, n. 85.
[50] Sixtus V. Constit. Immensae, ap. Craiss., n. 86.
[51] Bened. XIV. De Syn. Dioec., lib. xiii., cap. 3.
[52] Craiss., n. 87. Bouix, De Episc., tom. ii., p. 392.

Holy See, yet contain certain regulations which are rather tolerated than approved by the Sacred Congregation.[53] None of the provincial or national councils of the U. S. seems to be approved in forma specifica.

73. What has been said of provincial councils is, in most respects, applicable to national councils.[54] Provincial councils are convened by the metropolitans in person, or, if they be lawfully hindered, by the oldest[55] suffragan bishop. National councils in the U. S., on the other hand, are assembled by express direction of the Sovereign Pontiff, who appoints a representative of his authority in the apostolic delegate he commissions[56] to preside over them.

74. Each bishop may, in individual cases, relax in his diocese the decrees of prov. or national councils, unless it be said that they are approved in forma specifica.[57] Provincial councils, as was seen, are called by the metropolitan; sometimes, however, the convening and celebration of these councils were agreed upon in a special meeting of the bishops of the Province, held beforehand for that purpose; as, for instance, in the case of the Fourth Prov. C. of Quebec in 1868, and in the case of the Second Prov. C. of Australia, held in the city of Melbourne in 1869.[58] In regard to diocesan synods, see our "Notes."[59]

[53] Gousset, ap. Craiss., n. 87.

[54] Cfr. Soglia, vol. i., p. 74. Ferraris, v. Concilium, art. i., n. 5.

[55] Conc. Trid., sess. 24, cap. 2, De Ref. [56] Coll. Lac., l. c., p. 1250.

[57] Kenrick, Mor. Tract. 4, vol. i., p. 118. Cfr. Notes on the Sec. Pl. C. Balt., p. 438.

[58] Coll. Lac., vol. iii., p. 1057, 1058, 1415, n. 14. [59] p. 30.

CHAPTER V.

VII. ON THE ROMAN CONGREGATIONS AS A SOURCE OF CANON LAW.

ART. I.

Efficacy of the Decisions of the Sacred Congregations.

75. Later on we shall treat of the various functions and powers of each of these congregations. At present, we shall merely consider the force of the decisions or declarations (declarationes) of the Roman congregations. Congregations of cardinals (congregationes cardinalium, congr. Romanae) are committees or commissions[1] composed chiefly of cardinals, to whom the Sovereign Pontiff refers certain matters that relate in a special manner to the Church.

76. There are two kinds[2] of congregations: 1, permanent or standing committees or congregations (*congregationes ordinariae*), those, namely, which are permanently established; 2, temporary congregations (*congregationes extraordinariae*), or those which are convened[3] to attend to some particular or transient matter only, and therefore have no permanent existence. We shall here consider the decisions of the *congregationes ordinariae* only. The following are *congregationes ordinariae:* Congregatio Sacri Officii or Inquisitionis, Congr. Indicis, Congr. Consistorialis, Congr. Episcoporum et Regularium, Congr. Sacrorum Rituum, Congr. de Propaganda Fide, and several others.[4]

[1] Salzano, l. c., vol. i., p. 76.
[2] Ib., p. 77.
[3] Phillips, Kirchenr., vol. iv., § 200, p. 495, Ratisbon, 1850.
[4] Phillips, l. c

77. The question therefore comes up: Have the declarations of these congregations the force of universal law? The question is asked especially in reference[5] to the Congregatio Concilii, because of its special powers. We ask, therefore: Are the decisions of Congr. Concilii binding on the entire[6] Church? There are three opinions: The first[7] denies that these decisions have the efficacy of common law, 1, because this S. Congr. merely uses the words "*censuit, censemus,*" but does not employ any imperative or prohibitory terms in its declarations; 2, because these decisions are issued for particular cases only. For other reasons, see Bouix.[8] Hence, say the defenders of this opinion, the Pontiff speaks through this congregation only as its president, and not as head and doctor of the Church.[9]

78. The second opinion affirms that these decisions, when authentic, *i.e.*, when signed[10] by and having the seal of the prefect and secretary of the respective congregation, are of the same authority as though they had emanated *directly* from the Pope, and are, therefore, binding on the entire Church, even[11] when issued for a particular case only.

79. The third distinguishes thus: These declarations are of two kinds: 1, *declarationes extensivae, i.e.*, those which *extend*, as it were,[12] or stretch the meaning of words beyond their *ordinary* signification, and grant or prohibit something accordingly. These decisions,[13] forming, as it were, *new* laws, do not obtain the force of law unless they are issued by the special order of the Pope, and properly[14] promul-

[5] Craisson, Man., n. 95.

[6] We say "*entire Church*"; for it is certain that these decisions have the force of law *in casibus particularibus, pro quibus fiunt*; but are they binding also *in casibus similibus?* Here there are three opinions, as given above. (Cfr. St. Liguori, lib. i., n. 106, Quaer. 2°. Mechliniae, 1852.)

[7] Sanchez, Diana, Bonac., Laym., ap. Bouix, De Princip., p. 338. [8] Ib.

[9] Craisson, l. c., n. 98. [10] Phillips, Lehrb., § 43, p. 79.

[11] Bouix, De Princip., p. 341. [12] Ib., p. 344.

[13] Cfr. Phillips, Lehrb., § 43, p. 79. [14] Craiss., n. 100.

gated; 2, by *declarationes comprehensivae* we mean those which do not depart from the ordinary sense of the words of the law; which, therefore, are mere explanations of,[15] but not additions to, the law; which consequently have the force of universal law, and are retroactive.

80. *Q.* What is the practical consequence of this diversity of opinions?

A. One of the above opinions denies that the decisions of the Congr. Concilii have the efficacy of law; now, the Holy See has so far allowed this opinion to be taught in Catholic schools of learning.[16] Hence, it is lawful to hold that the declarations of the Congr. Concilii are not to be received as[17] universal laws. Nevertheless, it were rash to assert that these declarations can be practically set at naught;[18] for they are made by authority of the Holy See, and therefore "illis (declarationibus) tanquam regulae, saltem ordinarie, obtemperandum est."[19]

81. Have the decrees of the other congregations, *v.g.*, of the Congr. Rituum,[20] of the Sacra Poenitentiaria, etc., the force of law—that is, are they binding on the entire Church? The three opinions above given also exist in this case. Hence, what has been said of the Congr. Concilii applies to all other congregations.[21]

[15] Bouix, De Princip., p. 344. [16] Bouix, De Princip., p. 345.
[17] Ib., l. c., p. 345. [18] Ib., p. 347. [19] Ib., p. 346.
[20] The *sententia communissima* holds that the decrees and decisions of the Congr. Rituum bind *in casibus similibus*. Gury, vol. i., n. 130.
[21] Ib., p. 347.

CHAPTER VI.

VIII. ON CUSTOM AS A SOURCE OF CANON LAW.

ART. I.

Nature and Division of Custom.

82. Custom viewed as a[1] fact (*consuetudo facti*) means ipsosmet actus similes a communitate frequentatos.[2] Custom, regarded as a *right* (*consuetudo juris*) which results from the long usage and oft-repeated acts of a nation or community, is defined: A *right* (jus) induced by the manners and long-continued usages of nations with the express or tacit consent of the lawgiver.[3]

83. By custom, in the proper sense of the term, is meant the consuetudo juris and not the consuetudo facti.[4] Our remarks therefore apply to the consuetudo juris. The consuetudo juris, or custom proper, is induced by long usage; two or three acts are not sufficient.[5] Again, the usage must be that of a nation—*i.e.*, of a community that can make its own laws.

Hence the repetition of acts by a family cannot constitute custom, since the head of a family can make precepts but[6] not laws.

84. Custom is divided: 1. *Ratione finis seu effectus*, into consuetudo secundum legem, praeter legem,[7] and contra

[1] Leuren, For. Eccl., lib. i., tit. 4, quaest. 365.
[2] Bouix, De Princip., p. 351. [3] Soglia, vol. i., p. 33. Cfr. Notes, n. 15.
[4] Leuren, l. c., Reiff., lib. i., tit. 4, n. 5. [5] Craisson, Man., n. 104.
[6] Suarez, De Lege, lib. vii., cap. 7, n. 6.
[7] Leuren, For. Eccl., lib. i., tit. 4, quaest. 372.

legem. 2. *Ratione materiae*, into canonical (consuetudo canonica) and civil (consuetudo civilis). The former relates to spiritual or[8] ecclesiastical, the latter to temporal concerns. 3. *Ex parte causae efficientis*, into custom which is *generalissima* and obtains throughout Christendom; *generalis*, which prevails in an entire province or state; *specialis*, which exists in some city or town; *specialissima*, which is in force in an imperfect society—*v.g.*, in a family.[9] 4. *Ex parte causae formalis*, into judicial (consuetudo judicialis) and extra-judicial (consuetudo extrajudicialis). The former is induced by several similar judicial decisions in one and the same kind[10] of causes or trials; two such decisions given within ten years suffice, provided no contrary decision was rendered during that time.[11] Extra-judicial custom is established by long usage out of courts of judicature.[12] 5. Custom is *positive* and *negative*. The former consists in the performance, the latter in the omission, of[13] certain acts. 6. Custom may be *good* and *bad*. It may be bad either intrinsically[14] or extrinsically. It is *a jure non repulsa*, and *a jure abrogata, prohibita et reprobata*. 8. Finally, custom is either legitimately[15] prescribed or not so prescribed.

85. *Q.* What are the main differences between custom and prescription?

A. 1. Prescription may be introduced[16] by private or particular persons, while custom can be established by a community only. 2. Prescription tends to the acquiring of some right by *individuals*;[17] while custom establishes common law—*i.e.*, affects all who dwell in the locality in which the custom prevails.[18]

[8] Leuren, For. Eccl., lib. i., tit. 4, quaest. 372.
[9] Bouix, De Princip., p. 352. [10] Ib. [11] Craiss., n. 107.
[12] Bouix, l. c., p. 352. [13] Ib., p. 353. [14] Ib. [15] Ib., p. 354.
[16] Craisson, Man., 111. [17] Reiff., l. c., n. 23, 24.
[18] Bouix, l. c., p. 356.

Art. II.

Of the Essential Conditions of Custom.

86. In order that custom may have the force of law certain conditions are indispensable: 1, on the part of the community; 2, of the Roman Pontiff; 3, of custom itself; 4, of the duration of custom.

87. I. *On the part of the community* (ex parte communitatis), it is requisite that custom be introduced: 1, by a *perfect* society; 2, by the greater part of this society; 3, with due knowledge or consciousness; 4, with liberty; 5, with the intention of contracting an obligation, if there is question of custom praeter legem; 6, that the frequency of acts be not interrupted[19] before the custom is completely established. We say, 1, *by a perfect society*—that is, not merely by one person or a private family,[20] but by a community that can make its own laws, *v.g.*, a city[21] or State. Thus, an ecclesiastical custom relating to the clergy and laity can be introduced by the clergy and laity of a diocese, province, or country; in like manner, a custom pertaining to the clergy only may be established by the clergy of a diocese or province. The same holds good of religious orders[22] and the like. We say, 2, *by the greater part of the society.* For it is a general rule, that only the acts of a majority[23] are binding on a community. We say, 3, *with due knowledge*—that is, not through ignorance or error. This condition is of no ordinary importance. In France, for instance, and perhaps also in the United States, the impression seems to prevail that rectors of parishes, who are "ad nutum episcopi revocabiles," may be removed by the bishop in such manner that in no case can they have recourse to the Holy See. Yet,

[19] Bouix, l. c., p. 357. [20] Ib., p. 358.
[21] Suarez, De Lege, lib. viii., cap. ix., n. 5, pars. 2, p. 294. Neapoli, 1872.
[22] Bouix, l. c., p. 358. [23] Cfr. tamen Suarez, l. c., n. 10, in fine.

it is the general opinion of canonists that these pastors have, "ex jure communi," the right of appeal[24] in many cases. If, therefore, this belief, whether on the part of the bishops or of the clergy, is based upon an erroneous impression, which appears certain, no right of custom would follow from[25] their actions in this respect. 4. The acts must be free—*i.e.*, not extorted by violence or fear; 5, public;[26] 6, the intention of contracting an obligation is the next requisite of custom. This applies chiefly to customs *praeter legem.* Hence, acts of devotion, such as the hearing of Mass on week-days,[27] going to confession frequently during the year, and the like, do not produce custom having the force of law; 7, the acts must[28] not be interrupted, even by a single contrary action, before the complete formation of custom.

88. II. *On the part of custom itself* (ex parte ipsius consuetudinis) it is required that customs should be good and reasonable; hence, they should not be opposed to the divine or natural law,[29] nor reprobated by canon law, nor give occasion to sin; neither should they be adverse to the common interests of the community, or subversive of ecclesiastical[30] discipline.

89. III. *Ex parte principis.*—The term "princeps" here means the *supreme* lawgiver of a society; the Roman Pontiff is therefore rightly called the "princeps" of the Church.[31] Now, is the consent of the Pope necessary in order that customs may have the force of law? There is no doubt that this consent is, in some sense,[32] indispensable. For, customs are laws, and should therefore, whenever there is question

[24] Bouix, De Princip., p. 359, 360. [25] Cfr. Reiff., lib i., tit. 4, n. 126.
[26] Suarez, De Leg., lib. vii., c. ix., n. 4, and cap. ix., n. 1, 2.
[27] Reiff., l. c., n. 129.
[28] St. Liguori, lib. i., Tract. de Lege, n. 107. Mechliniae, 1852.
[29] Craiss., n. 120. [30] Bouix, l. c., p. 364 seq.
[31] Ib., p. 370. [32] Ib., p. 369.

of common ecclesiastical laws, emanate[33] from or have the sanction of the Holy See.

90. We said: The consent of the Pope is, *in some sense*, indispensable. Now, what kind of consent is essential? The Pontiff may give his consent expressly, tacitly, and legally.[34] 1. As to the *express* consent, there can be no difficulty; for it is certain, that as soon as the Pope expressly sanctions a custom, whether it be *praeter* or *contra jus*,[35] such custom obtains the force of law. 2. The Sovereign Pontiff is said to consent *tacitly*, when, though aware of a[36] custom, he does not oppose it. Is this consent sufficient to legalize[37] customs, whether praeter or contra jus? It is, provided the customs in question are reasonable, and the Pontiff may *easily* protest against them. If, however, he cannot[38] *prudently* protest against customs, *contra jus, v.g.*, because he may, by his disapproval, occasion schism, persecutions on the part of the civil power, and the like, such customs do not prescribe against the law. 3. As to the *legal consent*, we cannot do better than describe it in the words of Bouix:[39] "1. Consensus digitur *legalis*, quando summus Pontifex *ignorat* consuetudinem, et illi non consentit nisi per voluntatem generalem, qua vult omnes consuetudines *rationabiles* et *legitime praescriptas* firmas esse et vim legis habere. 2. Supponitur autem semper in summo Pontifice voluntas haec generalis." Now, is this *consensus legalis* sufficient to legalize customs? The question is controverted; the "sententia multo communior"[40] affirms that this consent is sufficient.[41] Note, 1, the Pope in thus consenting is not cognizant of the custom in question;[42] 2, a custom cannot be approved by "consensus legalis" unless it

[33] Craiss., n. 124. [34] Ib., n. 125. [35] Bouix, De Princip., p. 371.
[36] Ib., p. 372, 373. [37] Craiss., n. 126. [38] Bouix, l. c., p. 374
[39] L. c., p. 382. [40] Bouix, l. c., p. 382, 383.
[41] Suarez, De Lege, lib. vii., cap. xiii., n. 6.
[42] St. Liguori, lib. i., De Lege, n. 107, v.

is rationabilis and legitime praescripta. Now, when are customs lawfully prescribed? The answer is contained in the following paragraph.

91. IV. *Ex parte temporis seu diuturnitatis.*—A custom besides being good must be legitime[43] praescripta. Now, what length of time is requisite to constitute legitimate prescription? Before answering, we premise: 1. Customs, which are intrinsically evil, can[44] never obtain the force of law by virtue of prescription; 2, if the Roman Pontiff consents to a custom *personally*, *i.e.*, either expressly or tacitly, there is no need of prescription, since custom, so soon as it obtains this sanction, acquires the force of law.[45] 3. Prescription, therefore, can legalize those customs only of which the Pope is not cognizant, and to which he can, in consequence, give but a legal consent.[46]

92. We now answer directly: 1, With regard to customs *practer legem*, the space of ten years is sufficient. This is universally[47] admitted; 2, as to customs *contra legem*, there are three opinions.[48] The *first* holds that the space of ten years is always sufficient. The *second* distinguishes between *leges ecclesiasticas semel receptas, et nunquam receptas.*[49] The latter may be abrogated by decennial custom to the contrary; the former, only by one of forty years. The *third* opinion maintains that the space of forty years is always necessary.[50]

93. What follows from this diversity of opinions? 1. Ten years are certainly required; 2, forty years are undoubtedly sufficient; 3, practically speaking, it would seem that no custom can abrogate laws unless it has existed forty years.[51] Is good faith indispensable to prescription? The question is controverted.[52]

[43] Bouix, l. c., p. 357. [44] Ib., p. 385. [45] Ib., p. 386. [46] Ib., p. 386.
[47] Reiff., lib. i., tit. 4, n. 91. [48] Devoti, vol. i., p. 38. Leodii, 1860.
[49] Bouix, l. c., p. 388. [50] Craiss., n. 135. [51] Ib., n. 136. [52] Ib., n. 137.

Art. III.

What are the Effects of Customs? How are Customs Abrogated?

94. *Effects of Customs.*—A custom having the requisite conditions may, 1, authentically [53] interpret laws; 2, abrogate pre-existing laws; 3, introduce new obligations or laws; 4, invalidate acts contrary to it.[54]

95. How are customs abrogated? In three ways:

1°. *By subsequent laws.* Here we must distinguish between (*a*) general and particular customs, (*b*) immemorial customs (*i.e.*, customs that have existed a hundred years), and those which are [55] within the memory of men. 1°. A subsequent *general* law abolishes all *general* customs opposed to it, even when they are immemorial, and the law does [56] not expressly mention them.[57] We say: *general customs;* for *particular* immemorial customs are not thus abolished, unless the law expressly abrogates every [58] custom, etiam *immemorabilis.* 2. Particular customs, not immemorial, are abolished by subsequent laws containing the clause, *nulla obstante consuetudine.*[59] 3. Bishops, by their laws, can abrogate any particular custom whatever in their dioceses.[60]

96.—2°. *By previous laws.* We ask: Can customs prevail against anterior laws, prohibiting *all* customs to the contrary? The question is controverted.[61] The "sententia probabilior" holds that customs may obtain against a prior law, when the latter merely *prohibits*, but does not *reprobate*, customs [62] to the contrary.

97. *Q.* Are these principles applicable to the decrees of

[53] Reiff., lib. i., tit. 4, n. 158–160. [54] Bouix, l. c., p. 390–393. [55] Ib.
[56] Craiss., n. 139. [57] Reiff., l. c., n. 182. [58] Craiss., n. 140.
[59] Bouix, l. c., p. 394. [60] St. Liguori, lib. i., n. 109.
[61] Bouix, l. c., p. 396 seq. [62] Suarez, De Lege, lib. vii., cap. xix., n. 19, 20

the Council of Trent—*i.e.*, can the Tridentine decrees be abrogated by subsequent customs to the contrary?

A. There are two opinions: The *first* seems to hold that some disciplinary [63] decrees may be abrogated by customs to the contrary. There is no doubt that in France, and other countries where the Council of Trent is promulgated, some of its decrees were either never reduced to practice or have fallen into desuetude. The *second* opinion maintains that customs can in no case abolish *any* of the [64] Tridentine decrees. In fact, Pius IV., in his bull confirming the Council, expressly declared that its decrees shall have force against any custom whatever that may afterwards be introduced. It would [65] seem that the Holy See, in its decisions, has always adhered to this opinion.[66] The Council of Trent is not, in its entirety, published in the United States.

98. *Q.* What is to be thought of some ecclesiastical customs prevalent in the United States?

A. Kenrick [67] replies: "Legibus ecclesiasticis in hac regione plura solent fieri haud consentanea, quae utrum vim consuetudinis assecuta sint, vix audemus dicere. Vehementer commendandos censemus, qui universalis Ecclesiae disciplinam, a primo Concilio Baltimorensi valde commendatam, quatenus rerum adjuncta patiuntur, in omnibus imitantur."

99.—3°. *By customs to the contrary.* For, legitimate customs have the force of laws; now, a prior law is abrogated by a subsequent law of an opposite [68] character. Hence also previous customs may be abolished by subsequent customs to the contrary.

[63] Cfr. Craiss., n. 144.
[64] Bouix, l. c., p. 399–409.
[65] Cfr. Devoti, Prolegom., n. 50.
[66] Cfr. Bened. XIV., Instit. 60, n. 7.
[67] Mor., Tract. 4, pars i., n. 42.
[68] Bouix, l. c., p. 409

CHAPTER VII.

ON NATIONAL CANON LAW.

ART. I.

Nature and Essential Conditions of National Canon Law.

100. National canon law (jus canonicum nationale) is defined: *Complexio legum ecclesiasticarum alicui genti propriarum.*[1] By national canon law we do not mean the peculiar ecclesiastical laws of a country or nation which are merely *praeter* jus commune, but those which are at variance with it[2] (contra jus commune). Some authors, however, include in the national canon law those laws also which are *praeter* jus commune.[3]

101. National canon law may obtain in a country,[4] chiefly in three ways: 1. It may be national or exceptional from the very beginning; or it may become national, in that the jus commune, having everywhere else undergone change, remains unchanged in a particular nation.[5] 2. Again, the ecclesiastical law governing a nation may be exceptional from the very beginning in two ways: *a*, by virtue of simple privilege, whereby the general lawgiver exempts a nation from the universal law; *b*, or by virtue of some onerous contract.[6] 3. Again, the privilege of exemption from the common law may be acquired by a nation, either by the express consent of the general superior or by custom having his[7] tacit consent.

[1] Craiss., n. 146. [2] Bouix, De Princip., p. 74. [3] Craisson, Man., n. 148.
[4] Ib., n. 146. [5] Bouix, l. c., p. 74. [6] Ib. [7] Ib., p. 75.

102. We ask: Can national canon law be considered legitimate without the consent or authority of the Roman Pontiff? All national canon law is more or less a derogation from the common law of the Church; hence it cannot become lawful unless sanctioned[8] by the Pope. We say, *by the Pope;*[9] for no other power, whether civil or ecclesiastical, can dispense from or repeal in part the universal law of the Church.[10] Not the civil power, as is evident; nor an ecclesiastical power inferior to the Pope, such as councils, whether œcumenical, national, or provincial, for no council is œcumenical save when approved by the Sovereign Pontiff. National councils, far from being competent to alter or annul in part—*i.e.*, in some particular country—the *jus commune* of the Church, are themselves bound to observe it; this holds, a fortiori, of provincial councils, bishops, and other ecclesiastical superiors.[11]

103. For the rest, says Bouix, the Church, out of compassion for the weak, often tolerates in different parts of the Catholic world, customs which are opposed to her general law.[12]

104. *Q.* Can the Sovereign Pontiff annul all national canon law?

A. We reply in the affirmative. For, national canon law, whether originating in custom,[13] statutes, privileges, or concordats, depends upon the express or tacit sanction of the Pope. Now, as it is in the power of the Pontiff to give his consent, so also is[14] he at liberty to withdraw it, and thus abolish the "jus canonicum nationale" wherever it may exist.

105. It may, however, be asked whether national canon law, based upon concordats or solemn agreements between

[8] Bouix, l. c., p. 75. [9] Cfr. Craiss., n. 147. [10] Bouix, l. c., p. 76. [11] Ib.
[12] Ib., p. 76, 77. [13] Cfr. Phillips, Kirchenr., vol. v., § 206, p. 95.
[14] Cfr. Bouix, l. c., p. 77.

the Holy See and civil governments, may be annulled by the Pope. There can be no doubt that the Holy See is bound, as a general rule, to observe these agreements.[15] We say, *as a general rule;* for it is commonly held by canonists that the Pontiff may recede from concordats when there are just reasons for so[16] doing. In fact, it is controverted whether concordats are contracts proper or mere privileges. Again, it seems to be commonly admitted that in all agreements entered into by the[17] Sov. Pontiff this condition is understood: Nisi aliud exigat causa gravis et extraordinaria propter bonum commune ecclesiae.

Art. II.

Of American Canon Law, or of the National Canon Law of the United States.

106. *Q.* What is meant by American canon law?

A. By the national eccl. law of this country we understand the various derogations from the "jus commune," or the different customs that exist among the churches in the United States, and are sanctioned by the authority of the Roman Pontiff.[18] We say, "are sanctioned by the *Roman Pontiff*"; for, as was seen, no national law can become legitimate except by at least the tacit or legal[19] consent of the Pope. Again, the "jus particulare" of a nation always remains subject to the authority of the Holy See in such manner as to be repealable[20] at any time by it. Hence, the *jus nationale*, or the exceptional ecclesiastical laws prevalent in the

[15] Soglia, vol. i., p. 117.
[16] Cfr. Bouix, l. c., p. 78, seq. Cfr. S. Liguori, De Priv., 15.
[17] Craisson, n. 150.
[18] Bouix, De Princip., p. 84. Cfr. Craisson, Man., n. 151.
[19] Cfr. Craisson, Man., n. 151. [20] Bouix, l. c., p. 82.

U. S., may be abolished at any time by the Sovereign Pontiff.

107. *Q.* What is to be said in regard to American canon law, or in regard to those ecclesiastical laws and customs prevailing in the United States which are either contra or praeter jus commune?

A. Kenrick[21] thus answers: 1. Legibus ecclesiasticis, in hac regione plura solent fieri, haud consentanea, quae, utrum vim consuetudinis assecuta sint, vix audemus dicere. Plura autem ex indulto pontificio seu Facultatibus Episcopis concessis orta verosimile est, necessitate etiam cogente; quae idcirco retineri posse videntur, donec aliter Praesulibus, vel Sedi Apostolicae visum fuerit. Larido in diebus esurialibus, butyro et lacte, ovis et lacticiniis in Quadragesima, utuntur fideles, etc.

2. Caeterum, in aliis[22] plurimis, ea est morum discrepantia quae consuetudinem tollit, vel infirmat; ideoque quamvis non damnemus eos qui usus receptos sequuntur, quousque eos aboleverit Praesulum auctoritas,[23] vehementer tamen commendandos censemus, qui universalis Ecclesiae, et Romanae praecipue, disciplinam, a primo Concilio Baltimorensi valde commendatam, contrariis quarundam provinciarum usibus postpositis, quatenus rerum adjuncta patiuntur, in omnibus imitantur.

108. *Q.* How does the Church act with regard to national customs?

A. 1. These customs are either immoral or indifferent. Usages which are immoral or bad are rejected absolutely by the Church. Thus, the exposing of infants, the slave-trade,[24] bull-fights, duels, etc., were absolutely condemned by the Church. 2. Customs that are indifferent are frequently

[21] Mor., Tract. 4, pars. i., n. 42.
[22] Ib.
[23] Cfr. Bouvier, Tract. De Leg., p. 509. Paris, 1844.
[24] Greg. XVI., 1839.

adopted, and, so to say, Christianized by the Church;[25] 3, others, as the right of asylum, could be entirely sanctioned.

109. That national canon law or exceptional ecclesiastical laws and customs may legitimately obtain in the U. S., as elsewhere, is beyond doubt.[26]

[25] Phillips, Kirchenr., vol. iii., § 161, p. 710, 711.
[26] Cfr. Craisson, Man., n. 146.

CHAPTER VIII.

ON PRIVILEGES (DE PRIVILEGIIS).

ART. I.

Nature, Division, etc., of Privileges.

110. A privilege is defined: "Privata lex aliquid speciale concedens contra vel praeter jus."[1] A privilege is, 1, a *law* (lex), not in the sense that those who receive a privilege are also bound to make use of it, but because others are prohibited from placing any obstacles in the way of the use or exercise of privileges.[2] 2. A privilege is termed a *private* law (lex *privata*), not in the sense that a favor is granted to *one person* only, but because by privileges a *special* right or favor is by a particular law conferred, either upon an individual or a community. This *special* right may be either *contra* or *praeter* jus commune.[3]

111. Privileges being *private* laws are of force without being solemnly promulgated. Hence, in order to cause other parties to respect a privilege, it is sufficient to inform them of it privately, either by showing them the rescript or in some other manner.[4]

112. Privileges must be made known to ordinaries, 1, even when this is not demanded by them, if the privilege contains the clause "certioratis locorum ordinariis"; also when there is question of publishing new indulgences; 2,

[1] Ferraris, V. Privilegium, art. i., n. 1.
[2] Reiffenst., lib. v., Decretal, tit. xxxiii., n. 3. Edit. Paris, 1869.
[3] Suarez, De Lege, lib. viii., cap. i., n. 3, 4. [4] Craisson, Man., n. 157.

on demand of ordinaries those privileges must be exhibited which relate to the exemptions of religious institutes, provided these exemptions are not sufficiently known.

113. A privilege differs from a dispensation in this, that the latter, being merely an exemption [5] from the universal law, or a suspension of it in a particular case, is not a law, not even a "lex privata," [6] and is therefore not necessarily permanent.[7] A privilege, moreover, is distinguished from a mere permission (licentia); [8] the latter being given only for a few acts.[9]

114. *Division.*—Privileges are divided: 1, into privileges "contra jus"—*v.g.*, exemption from the jurisdiction of the ordinary, and into privileges "praeter or ultra jus"—*v.g.*, the [10] power to absolve from reserved cases, to grant dispensations, etc.; 2, privileges are real, personal, and mixed. A "privilegium reale" attaches proximately and immediately to a thing, place, office, or dignity; it passes to the successors in [11] office. Kenrick gives an instance of a real privilege: Sic privilegium est reale, altaris cujusdam, quod indulgentia plenaria applicabilis defunctis a celebrante in eo impetretur.[12] A "privilegium personale" is one that is conferred directly upon a certain person, "ratione sui"—*i.e.*, in view of his merits; [13] it is not transmissible if attached to an individual, but if attached to a moral person—*i.e.*, a community—it continues [14] in force, per se, so long as the community itself exists. "Privilegium mixtum" is partly personal and partly real.[15]

115.—3. Some privileges are contained in the body of the canon law (privilegia in corpore juris clausa); others

[5] Phillips, Lehrb., § 92, p. 176. [6] Ib. [7] Craisson, l. c., n. 159. [8] Ib.
[9] St. Liguori, De Priv., n. 1.
[1] Ferraris, V. Privilegium, art. i., n. 3. Genuae, 1768
[11] Reiff., lib. v., tit. xxxiii., n. 12, 13. [12] Mor., Tract. 4, pars. i., n. 62.
[13] Suarez, De Lege, lib. viii., cap. iii., n. 2. Neapoli, 1872.
[14] Bouix, De Jure Regular., tom. ii., p. 75. Paris, 1867.
[15] Reiff., l. c., n. 14.

are[16] conferred by special letters—*v.g.*, bulls, rescripts, indults (privilegia extra corpus juris).

116.—4. A privilege is *gratiosum* when given, not in view of any[17] merits; *remuneratium*, when bestowed as a reward or recompense; *conventionale*, or *purum*, according as it is based upon an agreement, or not so[18] based.

117.—5. Privileges are *perpetual* if given without limit of time—*i.e.*, for[19] an indefinite period; they are *temporary* when bestowed for[20] a certain period—*v.g.*, ten years.

118.—6. Privileges are *per se* and *ad instar*. Privilegia ad instar are[21] those which are granted on the model of other privileges.

119.—7. Privileges are named *communia* when they are bestowed upon communities; *privata*, when given to individuals. A person may renounce his own[22] private privilege, but he cannot give up a privilege pertaining to a community of which he is a member. Thus a clergyman is not at liberty to[23] disclaim the benefit of clergy (privilegium fori) where it is in force.[24]

120.—8. Privileges are usually granted by the Pope in *writing* (litteris); sometimes also *orally* (privilegia vivae vocis oraculo concessa). 9. Again, the Pope bestows privileges either motu proprio[25] or ad instantiam.

121. *Q.* Who can bestow privileges?

A. Only those who have the power to enact[26] laws. Hence, the Pope alone may everywhere concede privileges contra jus. Bishops may confer privileges, by which exemption is granted from[27] statutes made by themselves or their predecessors.

[16] Ferraris, V. Privileg., art. i., n. 4. [17] Craisson, Man., n. 160.
[18] Ib. [19] Reiff., lib. iv., tit. xxxiii., n. 18. [20] Phillips, Lehrb., § 92, p. 176.
[21] Reiff., l. c., n. 20. [22] Bouix, De Jur. Regular., tom. ii., p. 75.
[23] Cfr. Blackstone, bk. iv., ch. 28.
[24] Cfr. Kenrick, tract iv., pars. i., n. 65.
[25] Phillips, l. c. [26] Craisson, l. c., n. 161. [27] Reiff., l. c., n. 26.

122. Privileges are acquired, 1, concessione[28] principis; 2, legitima consuetudine si agatur de communitate; si vero agatur de privata persona,[29] acquiri possunt per praescriptionem; 3, inter regulares, acquiruntur per communicationem.[30]

123. As a rule, privileges, though not containing a derogatory clause, may nevertheless derogate from the common law of the Church;[31] but when they are to restrict the jurisdiction of the ordinary, the parties interested should be heard in their own[32] behalf, except where the Pope directs otherwise.

124. Privileges, in order to be valid, need not, ordinarily speaking, be given *in writing*.[33]

125. Does a privilege properly conceded take effect as soon as it is conferred, or only when it comes to the knowledge of the privileged person? The question is debated. The more probable opinion appears to be that which thus distinguishes:[34] If the privilege is bestowed *motu proprio*, and not at the request of the privileged party, it does not *usually* take effect before it has been brought to the notice of, and accepted by, the privileged person.[35] If, however, it is conceded at the solicitation of the privileged party (ad preces privilegiati), it takes effect *immediately* upon being granted.[36] Hence, where the Tridentine decree *Tametsi* obtains, a priest having written to the bishop or parish priest for[37] permission to bless a marriage can assist validly[38] at the marriage, even before receiving an answer, provided the permission was[39] really given before the ceremony took place. The same holds true of all cases where dispensations or other faculties are asked from the bishop.

[28] Reiff., lib. v., tit. xxxiii., n. 38. [29] Craiss., n. 161.
[30] Suarez, De Lege, lib. viii., cap. vii., n. 4, 5. [31] St. Liguori, De Priv., n. 2.
[32] Craiss., n. 162. [33] Ib., n. 163. [34] Bouix, De Jure Regular., vol. ii., p. 76.
[35] Cfr. Reiff., l. c., n. 42–46. [36] Ib., n. 46–48. [37] Ib., n. 48.
[38] We say *validly*; for he cannot do so *lawfully* except for sufficient reasons. (Cfr. Reiff., l. c., n. 48.) [39] Bouix, l. c., p. 76.

The following practical rule of conduct, observable of course also in the United States, may therefore be laid down: When a priest has written, or sent a messenger, to the bishop or chancellor for a dispensation or for faculties to absolve from *reserved cases*, he may, upon reasonable cause, marry the parties for whom he asked the dispensation, or impart absolution from reservations, even before he receives the answer of the bishop or chancellor, provided he has reason to believe that the faculty was really granted at the time.[40]

126. *Confirmation of privileges.*—The renewal (*innovatio*) or rather[41] confirmation (*confirmatio*) of privileges *aliud non est quam corroboratio privilegii legitime jam habiti.*[42] Under certain circumstances, privileges already possessed by a person must be renewed, or, rather confirmed.[43] They are confirmed in two ways: 1, in forma communi; 2, in forma speciali—*i.e.*, ex certa scientia.[44] The effects of each of these confirmations are given in detail by Reiffenstuel.[45]

127. *The use of privileges.*—As a rule, no one is bound to make use of his privileges.[46] We say, as a rule; for there are several exceptions—*v.g.*, if the privilege redounds to the bonum commune; or if it is a privilegium *reale*—*i.e*, attached

[40] We must not be misunderstood. 1. We do not affirm that it is allowed to make use of *presumptive* dispensations. For, dispensations are presumptive when it is presumed that the bishop, if applied to, would readily grant them, but not when he is actually asked for them, as in our case. 2. Nor do we hold that a priest can, as a rule, absolve *cum jurisdictione dubia, in dubio facti*—*v.g.*, when he is in doubt whether the bishop has given him faculties in the case; for, in our case, the petitioner, though not officially informed, is nevertheless morally certain from other sources—*v.g.*, because he knows that the letter reached the bishop or chancellor and that the faculty is never refused—that the bishop has granted the faculties. (Cfr. Gury., Edit. Ballerini, vol. i., n 118; vol. ii., n. 549.)

[41] Cfr. Phillips, Lehrb., p. 176. [42] Reiff., l. c., n. 73. [43] Phillips, l. c.
[44] Bouix, l. c., p. 78. [45] L. c., n. 77–82. [46] Craiss., n. 166.

to a place, dignity, or state, such as privileges of bishops and regulars; in these and several other cases, privileged persons cannot renounce their [47] privileges.

128. *Q.* How are privileges to be explained?

A. We premise: 1. Distinguitur interpretatio extensiva et comprehensiva. Interpretatio extensiva est illa per quam legis alicujus decisio extenditur ad alium casum aliasve personas, ultra verba legis, et simul ultra, sed non contra mentem legislatoris. Interpretatio comprehensiva est illa, qua decisio legis extenditur ultra ipsius verba, sed non ultra mentem legislatoris.[48] 2. Again, privileges may be interpreted by the law-maker himself (interpretatio auctoritativa, definitiva) or by private doctors [49] (interpretatio doctrinalis).

Having premised this, we now answer: Privileges, which are "contra jus commune," and prejudicial to other parties,[50] must be strictly construed; except, however, 1, when they are in the Corpus juris; 2, or given "motu proprio"; or 3, bestowed upon religious communities.[51]

129. *Q.* How do privileges lapse?

A. 1. By revocation (revocatione). The Sovereign Pontiff can, where the good of religion so requires, revoke privileges. The Council of Trent revoked many privileges—their [52] number having become too great. Privileges may be validly revoked [53] even without any cause; but when they were conceded as a recompense, or have the force of [54] contract, a just cause is required. Revocation may be express or tacit. Express revocation is either special or general. General revocation is subdivided [55] into ordinary and extraordinary. 2. The Pope is especially free to revoke privileges when they are granted conditionally—*i.e.*, subject to

[47] Craiss., n. 166. [48] Bouix, l. c., p. 78. [49] Reiff., l. c., n. 95, 96.
[50] Ferraris, V. Privileg., art. ii., n. 27. [51] Phillips, Lehrb., § 92, p. 177.
[52] Ib. [53] Craisson, Man., n. 169. [54] Reiff., lib. v., tit. xxxiii., n. 122.
[55] Bouix, De Jure Regular., vol. ii., p. 80.

revocation. Privileges thus conditioned lapse at the death of the [56] grantor, when they are given "usque ad beneplacitum nostrum"; but they continue to be of force even after the death of the grantor, if they are bestowed "usque ad apostolicae sedis [57] beneplacitum," or with the words, "donec revocavero." 3. Personal privileges lapse with the death of the person [58] privileged. 4. Privileges may also lapse, by being expressly or [59] tacitly given up or renounced (renuntiatione). 5. Privileges are lost, and that sometimes ipso facto, by [60] being abused. Clerics, for instance, living like laymen, are deprived of the benefit of clergy.[61]

[56] Phillips, l. c. [57] Ib., p. 177. [58] Ib.
[59] Ib., l. c., p. 177. [60] Ib. [61] Reiff, l. c., n. 176–180.

CHAPTER IX.

ON THE HISTORY OF THE COMMON CANON LAW; OR ON THE HISTORY OF THE CANON LAW OF THE ENTIRE CHURCH.

ART. I.

Of Collections of Canons in General (De Collectionibus Canonum in Genere.)

130. Down to the second, and perhaps third, centuries of the Church, the Sacred Scriptures and the "Rules laid down by the Apostles," or apostolic [1] men, constituted the law of the Church in the East as well as in the West.

131. Later on, however, numerous canons were framed by councils. The canons of councils and the decrees of Sovereign Pontiffs were at various times collected into one code [2] and arranged in an orderly manner. These codes were named Collectiones Canonum. The history [3] of canon law, therefore, may [4] be appropriately called "History of the Collections of the Sacred Canons," or also "History of the Sources [5] of Canon Law."

132. In order to form a correct idea of the canons of the Church, it is necessary to know the nature [6] both of the different collections and of the canons themselves. We shall therefore say a few words on each.

[1] Bouix, De Princip., p. 425.
[2] Soglia, vol. i., p. 86. Leodii, 1860.
[3] Cfr. Devoti, Prolegom., cap. iv., § 51.
[4] Walter, Lehrb., § 61.
[5] Phillips, vol. iv., § 167.
[6] Salzano, Diritto Can., vol. i., p. 59.

133.—I. *Character of the various Collections.*—The great utility of these collections consisted[7] in this, that the canons which were scattered through many volumes were grouped together and exhibited to the view of the student at a glance. Moreover, these collections, when made by public authority, served[8] to distinguish the genuine from the spurious canons. A few observations in regard to these collections in general will suffice.

134.—1. In matters of faith there must be unity throughout the whole Church. For, as Tertullian says: "Regula fidei una omnino est, sola, immobilis, et irreformabilis." But, in matters of discipline,[9] different practices may lawfully exist in the various parts of the Church; in other words, national canon law may lawfully obtain among the different nations of Christendom. Hence,[10] some churches—*v.g.*, the Oriental, the African, the Spanish—had their collections, which contained not only the canons of the universal Church, but also those of the respective particular church.

135.—2. The mere placing together of canons in one collection[11] adds, of itself, no weight to the canons themselves. Hence, canons compiled in a code by *private* authority have no other authority than what they would have[12] out of the collection. If canons, therefore, are to have any authority 'ratione collectionis," the collection itself must be made, or at least approved, by *public* authority. Collections, therefore, of canons when made or received[13] by the authority of the Holy See or œcumenical councils, are binding on all the faithful; but when made by authority of the bishops of a nation or country, on the faithful only of such country.

136.—3. Finally, canons or collections are apocryphal or supposititious[14] when not ascribed to the proper author or when interpolated or altogether spurious.

[7] Soglia, vol. i., p. 86. [8] Salzano, l. c., p. 58, 59. [9] Ap. Soglia, l. c., p. 86.
[10] Ib. [11] Ib., p. 87. [12] Salzano, l. c., p. 59.
[13] Soglia, l. c. [14] Ib.

137.—II. *Nature of the Canons themselves.*—As the subject-matter of canon law is threefold, namely, faith, morals, and discipline, so there are three kinds of canons: 1, canones fidei or canones dogmatici; 2, canones morum; 3, canones disciplinae.[15]

138.—1. *Canones dogmatici* are those "in quibus aliquid credendum proponitur." Two things are required to constitute a dogmatic canon: 1, that the truth enunciated in the canon be revealed; 2, that it be proposed[16] by the Church. As to the marks by which canons are known to be dogmatic, see Soglia.[17]

139.—2. *Canones morum* relate to those things "quae in humanis actibus, propter se, honesta sunt vel turpia, adeoque vel agenda vel omittenda."[18] Many canons of this kind are found in the Decretum Gratiani—*e.g.*, in regard to contracts, oaths, adulteries, thefts, usuries, and the like. As these canons either enjoin what is intrinsically good, or prohibit[19] what is intrinsically evil, they can never be abrogated.

140.—3. *Canones disciplinares* are those "qui feruntur ad puritatem fidei, honestatem morum, divinique cultus sanctitatem tuendam."[20] To this class belong those canons: 1, which decree censures and other ecclesiastical penalties against heretics, adulterers, etc.; 2, or lay down the precept of paschal communion; 3, or also regulate the appointment to ecclesiastical offices; 4, or regard the administration of the sacraments, sacred rites, and the like.[21] We observe here that although canons may be, according to Cardinal Soglia, divided into three kinds, as was just seen, they are nevertheless more usually divided into two kinds only, namely, into dogmatic and disciplinary.[22]

[15] Soglia, l. c., p. 15, § 8.
[16] Ib., § 9, p. 16.
[17] Ib., p. 10.
[18] Ib., vol. i., p. 19.
[19] Ib., p. 20, § 12.
[20] Ib., § 13, p. 20.
[21] Ib. p. 21.
[22] Ib., p. 15, § 8.

Art. II.

Of the State of Canon Law in the Oriental Church—Eastern Collections.

141. The chief collections of canons of the Eastern Church are:

I. *The celebrated and very*[23] *ancient Collection referred to in the Council of Chalcedon* (451).—In *actione 4a and 11a* of this Council, we read that certain canons were read, by order of the Council,[24] out of a code or book of canons. There is no doubt, therefore, that a collection existed at the time; its compiler, however, is entirely unknown. It contained 166 canons, enacted respectively[25] by the Councils of Nice, Ancyra, Neo-Caesarea, Gangra, Antioch, Laodicea, and Constantinople. Phillips[26] holds that this collection had no official character and was not recognized by the Council of Chalcedon as having authority in the entire Church. Salzano,[27] however, maintains that, although the collection comprised the canons of the Eastern Church only, it was nevertheless approved by the entire Church in the Council of Chalcedon.

142.—II. *The Collection of John, surnamed Scholasticus.*—This author added to the above collection the canons of the Apostles, of the Councils of Sardica, Ephesus, Chalcedon, also 68 canons taken from the Epistles of St. Basil.[28] The collection is divided into fifty titles, treating first of bishops, then of priests, deacons, etc. After John was made Patriarch of Constantinople (A.D. 564) he compiled[29] another collection, in which were grouped together not only the canons

[23] Soglia, vol. i., p. 92. [24] Cfr. Bouix, De Princip., p. 415, 416.
[25] Soglia, l. c., p. 93. [26] Kirchenr., vol. iv., § 169, p. 20. Ratisbon, 1851.
[27] Diritto Can., vol. i., p. 61, 62. [28] Soglia, l. c., p. 93.
[29] Bouix, De Princip., p. 420, 421.

of the Church, but also the laws of the empire which had any relation to the laws of the Church; this collection was consequently termed *Nomo-Canon.*[30]

143.—III. *Collection of Photius, Pseudo-Patriarch of Constantinople.*—Photius compiled his Nomo-Canon in 858, and divided it[31] into fourteen titles. It contains the seeds of the Greek schism.

144.—IV. *Commentaries* on the Greek[32] code were written by the monk Zonaras in 1120, and by Theodore[33] Balsamon in 1170.

145.—V. *Synopses or Abridgments* of the code were made by Logotheta, Aristenus, Arsenius (1255), Harmenopulus (1350), and others.[34]

146.—VI. *State of Canon Law in the Greek and Russian Church at the present day.*—The collection of Photius, the commentaries of Zonaras and Balsamon, and, finally, the latest enactments of the various patriarchs, constitute,[35] so to say, the body of laws by which the Greek Church is governed at present. The Russian Church is, at present, ruled chiefly by the decrees of the Sancta Synodus[36]—a permanent senate instituted by Peter the Great in 1721.

Art. III.

History of Canon Law in the Latin Church—Collections of Dionysius Exiguus, of Isidore Mercator, of Gratian, etc.

147. The collection or code of canons of the Councils of Nice and Sardica,[37] which had been translated into Latin, was for a long time—*i.e.*, down to the sixth century—the only collection publicly[38] received in the Western or Latin

[30] Salzano, l. c., p. 64. [31] Bouix, De Prin., p. 422. [32] Soglia, vol. i., p. 94.
[33] Walter, Lehrb., § 73, p. 125. [34] Ib., § 74. Cfr. Salzano, vol. i., p. 64.
[35] Ib. [36] Ib. [37] Devoti, Prolegom., n. 57.
[38] Bouix, De Princip., p. 426.

Church. It is true that already prior to the sixth century there were Latin translations of the entire Greek code or collection of canons, namely, the Isidoran and the Prisca.[39] But neither obtained public authority before the period in question.[40]

148. The chief collections of the Latin Church are the following:

I. *Collection of Dionysius Exiguus in the Sixth Century.*— Devoti[41] says of Dionysius: "Fuit hic Dionysius instituto monachus, natione Scytha, moribus et domicilio Romanus, doctrina vero et vitae integritate praeclarus." He came to Rome after the death of Pope Gelasius († 496) and died in 536[42] or 540.[43] It is matter of controversy whether any code of canons of the Latin Church existed previous to the Dionysian collection.[44]

149. The collection of Dionysius is divided into two parts: one contains the canons of councils; the other, the epistles of the Roman Pontiffs.[45] The first part embraces the canons of the Apostles, the canons of the Councils of Nice, Ancyra, Neo-Caesarea, Gangra, Antioch, Laodicea, Constantinople, Chalcedon, and of the Councils of Africa;[46] the second, the decretal epistles of the Sovereign Pontiffs from Siricius to Anastasius II.[47]

150. This collection attained to great influence throughout almost the entire Church, though it had no public authority or official character. It was afterwards, however,[48] to a certain extent, approved by the Apostolic See, as we learn from the fact that Pope Adrian I. presented it, with some additions, to Charles the Great, in order that it might serve as the code of laws for the churches of the empire.[49]

[39] Devoti, l. c., n. 58.
[40] Cfr. Bouix, l. c., p. 431.
[41] L. c., n. 59.
[42] Phillips, vol. iv., p. 35.
[43] Darras, vol. ii., p. 138.
[44] Soglia, vol. i., p. 95.
[45] Craiss., n. 176.
[46] Bouix, l. c., p. 436.
[47] Devoti, l. c., n. 60.
[48] Ib., n. 61.
[49] Soglia, vol. i., p. 95.

151. Other collections of less note are: 1, Collection of St. Martin, Archbishop of Braca, who died in 583; 2, Breviatio or indiculum of canons by Ferrandus, deacon of Carthage (ann. 547); 3, Breviarium or collection of Cresconius, an African bishop, who flourished in 697.

152.—II. *Collection of Isidore Mercator in the Ninth Century.*—On this head we merely sum up the arguments given in our "Notes."[50] 1. This collection was regarded as genuine by all canonists and theologians for seven hundred years —that is, from the ninth to the fifteenth century.[51] 2. Cardinal Cusanus, who flourished in the fifteenth century, was the first who questioned its authenticity. That the Isidoran collection is spurious,[52] at least in part, there can be no doubt at[53] the present day. 3. France is assigned as the place whence probably it was issued; it came into use between the years 829 and 857. 4. It wrought no material change[54] in the discipline of the Church; for even those documents which are spurious only reflected such doctrines as were universally believed at that period.[55]

153. Collections of less importance[56] are: 1, Collection of Regino in 906; 2, collection of Burchard, Bishop of Worms, which appeared between the years 1012 and 1023; 3, collection of Anselm of Lucca († 1086); 4, of Cardinal Deusdedit, which was dedicated to Pope Victor III. (1086–1087); 5, of Yvo of Chartres († 1117); 6, Liber Diurnus, which is thus described by Bouix:[57] "Romani *Diurni* nomine appellatur codex in quo, praeter formulas scribendi, continentur insuper ordinationes Summi Pontificis, professiones fidei, privilegia, praecepta," etc. This Liber Diurnus was probably compiled soon after the year 714, and served as a chancery book.[58]

[50] Soglia, vol. i., p. 31–38.
[51] Ib., p. 97.
[52] Craiss., n. 177.
[53] Devoti, Proleg., n. 68.
[54] Phillips, vol. iv., p. 87, 88
[55] Bouix, De Princip., p. 456, 457.
[56] Phillips, l. c., p. 128–132.
[57] L. c., p. 464.
[58] Walter, p. 183. Bonn, 1839.

154.—III. *Collection of Gratian in* 1151.—Gratian was born at Chiusi, in Tuscany, and became a Benedictine monk at[59] Bologna, where, in the year 1151, he issued his celebrated work, now commonly known as the *Decretum Gratiani*. It is not simply a collection, but a scientific and practical treatise on canon law.[60] The chief object of the work seems to have been to explain and reconcile the various *seemingly* contradictory canons as they existed in the collections of that period.[61]

155. The *Decretum* is made up of texts from the Sacred Scriptures, of fifty canons of the Apostles, of canons of councils, of constitutions of Roman[62] pontiffs, etc. It is divided into three parts:[63] The first treats of ecclesiastical persons and offices, and consists of 101 *distinctiones*, which are divided into chapters and canons; the second, of ecclesiastical judicature, and is composed of 36 *causae*, each of which is divided into *quaestiones*, which in turn are subdivided into canons and chapters; the third, of the liturgy of the Church, and is made up of five *distinctiones*. More than a hundred canons are named *Paleae*, a title probably derived from the name *Pauca Palea*, who was a disciple of Gratian, and is supposed to have inserted these *Paleae* into the *Decretum*.[64]

156. Gratian's collection obtained great authority and superseded all other collections; yet it remained a *private* compilation, was never clothed with an official character, or approved by the Holy See.[65] Mistakes abound in it, the author drawing on and copying from the collections then extant and containing inaccuracies.[66] Corrections of the Decretum were made by order of Popes Pius V. and Gregory XIII.

Minor collections of this period are: That of Cardinal[67]

[59] Devoti, l. c., n. 73. [60] Walter, l. c., p. 193. [61] Phillips, l. c., p. 142.
[62] Craiss., n. 184. [63] Cfr. Phillips, l. c., p. 152–154. Cfr. Devoti, l. c., n. 74.
[64] Phillips, l. c., p. 161. [65] Devoti, Prolegom., n. 79.
[66] Phillips, l. c., p. 149. [67] Ib., p. 174.

Laborans (1182); Collectio Prima, by Bernard of Pavia,[68] in 1190; Collectio Secunda, by Gilbert,[69] an English writer (1203); Collectio Tertia, Quarta, and Quinta.[70]

157.—IV. *Collection of Decretals under Gregory IX.*—Pope Gregory IX. ordered a code to be published, in which the *corpus* of the entire ecclesiastical law should be suitably arranged. Whatever was[71] useless and confused or ambiguous was to be retrenched or corrected. The accomplishment of this task was entrusted to St. Raymond of Pennafort, who began the work in 1230 and finished it in the year 1233.[72]

158. The whole work is divided into five books. The first treats of ecclesiastical judicature or of prelates; the second, of civil lawsuits; the third, of ecclesiastical matters brought before the episcopal forum, in causis civilibus; the fourth, of betrothals and marriages; the fifth, of judicial proceedings in criminal matters, of censures and the like. This collection is authentic, and has the force of law in every[73] particular; the same holds of the Clementine collections. The titles even are authentic, and serve as rules of[74] law.

159. Of the other collections of decretals, we may mention: 1. The *Liber Sextus*, or Sextus Decretalium, which was[75] published in 1298 under the auspices of Pope Boniface VIII. 2. The *Clementinae*,[76] or collection of decretals by Pope Clement V. (1305–1314). 3. The *Extravagantes* of John XXII. (1315–1334), and the *Extravagantes* communes. 4. *The Bullary of Benedict* XIV., which contains the constitutions of that Pope and is of public authority. 5. The *Bullarium magnum Romanum*.[77] This collection or code, made up originally of fourteen volumes, the last of which was pub-

[68] Phillips, l. c., p. 211. [69] Ib., p. 223. [70] Craiss., n. 185

[71] Bouix, De Princip., p. 484.

[72] The Decretals of Gregory IX. begin with those of Alexander III., thus forming a continuation of Gratian's work, which was only carried down to that period. (Cfr. Darras, vol. iii., p. 360.) [73] Bouix. De Princip., p. 485, 486.

[74] Craiss., n. 186, 187. [75] Phillips, vol. iv., p. 356. [76] Ib., p. 387. [77] Ib., p. 485.

lished in 1744, has of late been continued in Rome (1839). Bouix[78] says of it: "Valde imperfecta est, et majori adhuc negligentia hodie Romae continuatur." It is merely a private collection, and therefore has no authority as a collection—*quatenus collectio.*

160.—V. *Corpus Juris Canonici; its component parts and authority at the present day.*—The term *corpus*, when used in reference to laws, ecclesiastical as well as civil, means a *collection* of laws that forms, so to say, a whole.[79] At present the Corpus Juris Canonici consists of, 1, the "Decretum Gratiani," to which are annexed the Penitential canons and the canons of the Apostles; 2, the five books of the decretals of Gregory IX.; 3, the Liber Sextus of Boniface VIII.; 4, the Constitutiones Clementinae; 5, the Extravagantes of John XXII.; 6, the Extravagantes Communes. "His sex partibus," says Bouix,[80] "expletur et clauditur Corpus Juris Canonici."

161. *Authority of the Corpus Juris Canonici at the present day.*—We cannot do better than give the words of Bouix[81] on this point: "Codicem autem illum juris canonici dictum, prae manibus habeat, perpetuoque, *nostris etiam temporibus* evolvat necesse est, quisquis in jurisprudentia canonica, non vult penitus caecutire. Licet enim multa immutaverint tum Concilium Tridentinum, tum novae Constitutiones Pontificiae, innumera tamen immota prout in Corpore Juris Canonici extant remansere."

162. *Q.* What are the chief matters to which the Corpus juris canonici applies at the present day?

A. 1. The *Corpus* still has the force of law in matters relating to the ecclesiastical judicature, to divine worship, ecclesiastical[82] doctrine, and discipline. 2. It is, moreover, the code used at present in the schools of learning[83] and in the ecclesiastical forum. 3. Besides, canonists have for

[78] Phillips, l. c., p. 489. [79] L. c., p. 403, 404. [80] L. c., p. 489.
[81] Ib., p. 490. [82] Ib., vol. iv., p. 412. [83] Devoti, Prol., p. 19.

many centuries taken their arguments, to a great extent, from the *Corpus Juris;* these arguments, therefore, can be understood fully only by those [84] who are familiar with the *Corpus* itself.

163.—VI. *The Jus Novissimum.*—Speaking in general, the Jus Novissimum consists of laws published from the time the *Corpus Juris Canonici* [85] was closed—*i.e.*, since the *extravagantes* were inserted down to the present day.

164. This *Jus*, speaking in particular, is principally made up of these parts: 1. *The constitutions or decretals of the Roman Pontiffs.* No authentic collection has been made of the various constitutions or laws [86] made by the Roman Pontiffs since the close of Corpus Juris. The only exception in this respect is the Bullary of Benedict XIV., which is of public authority. Of the various *private* collections that are extant, the *Bullarium Magnum Romanum*, which, however, is replete with errors, holds the foremost rank. 2. The *regulations* by which the Apostolic chancery is governed (*regulae cancellariae Romanae*). 3. The *decisions* of the congregations or committees of cardinals. 4. *The decrees of the Council of Trent*, which, in fact, form the chief portion of the *Jus Novissimum.*[87] 5. Finally, the decrees of the Council of the Vatican.

[84] Bouix, l. c., p. 490. [85] Ib., p. 495. [86] Ib., p. 496. [87] Ib.

CHAPTER X.

HISTORY OF PARTICULAR OR NATIONAL CANON LAW--HISTORY OF CANON LAW IN THE UNITED STATES.

165. So far, we have discoursed on the history of the canon law of the entire Church, or of the common canon law. We now come to the historical phase of canon law in the United States.

166. Decrees of provincial and national councils form one of the sources of our national canon law. The first council, or rather diocesan synod, ever held in the United States was that of Baltimore in 1791. Its acts and decrees were republished by order of the First Provincial Council of Baltimore, and are therefore authentic as a collection.[1] The First Provincial Council of Baltimore was held in 1829,[2] the second in 1833,[3] the third in 1837, the fourth in 1840, the fifth in 1843, the sixth in 1846, the seventh in 1849. To these councils *all* the bishops of the United States were called; in this respect, therefore, they might be styled national or plenary councils. They are, however, usually, and correctly so, named provincial councils, since but one ecclesiastical province existed at the time, and they were convened by the metropolitan as such but not by a Papal delegate.

167. By Apostolic briefs of July 19, 1850, the Sees of New Orleans, Cincinnati, and New York were raised to the dignity of metropolitan churches. St. Louis had been erected into an Archiepiscopal See, July 20, 1847, though suffragans

[1] Conc. Prov. Balt., p. 5, 6. Balt., 1842.
[2] Ib., p. 57, 91, 92.
[3] Ib, p. 29.

were assigned it only in 1850. The United States were thus divided into six ecclesiastical provinces, including[4] the Province of Oregon, erected July 12, 1846.

168. The First National Council of the United States was held at Baltimore in 1852 under the[5] presidency of Archbishop Kenrick, as Papal delegate. Six archbishops and twenty-six bishops took part in its deliberations. The Propaganda,[6] by letters of September 26, 1852, approved its decrees. The Second National or Plenary Council of Baltimore met in 1866, and was presided over by Archbishop Spalding, as Papal delegate. Its decrees were[7] confirmed by letters of the Propaganda, dated January 24, 1868.

169. We may here apply to the United States what Blackstone[8] writes of England: "Besides the Pontifical collections, there is a kind of national canon law composed of legatine and provincial constitutions, and adapted only to the exigencies of this Church and kingdom. The former (legatine) of these are ecclesiastical laws, enacted in national synods; the latter are the decrees of provincial councils."

170. *Q.* What is meant by the confirmation of councils in forma communi and in forma specifica?

A. 1. Suarez[9] affirms confirmation *in forma communi* to be that which is given "cum sola cognitione *confusa* privilegii [or, as the case may be, councils] sine *distinctiori notitia* illius." Benedict XIV.[10] says: "In forma communi confirmari dicuntur statuta, quae non singulatim examinantur, neque approbantur a Pontifice *motu proprio*, et ex certa scientia."

2. *Confirmatio in forma specifica* is that "quae fit cum *perfecta notitia* totius negotii, et omnium[11] ejus circumstan-

[4] Cath. Ch. in U. S., pp. 195, 196. [5] Ap. Coll. Lac., tom. iii., p. 130 seq.
[6] Ib., p. 151. [7] Conc. Pl. Balt., ii., p. 136.
[8] Comm. Introd., sect. 3, pp. 18, 19. London, 1819.
[9] De Leg., lib. viii., cap. xviii., n. 5. Neapoli, 1872. Cfr. Reiff., lib. ii., tit. 30, n. 7. [10] De Syn. Dioec., lib. xiii., cap. v, n. 11. [11] Reiff., l. c.

tiarum." Benedict XIV. explains this more explicitly:[12] "In forma specifica fieri (confirmatio) dicitur, cui praemittitur causae cognitio, et singula statuta diligenter expenduntur, ac deinde, nulla adjecta conditione, auctoritate Apostolica cum clausula motu proprio, atque ex certa scientia, confirmatur."

171. *Q.* How can it be known that a provincial or national council is approved *in forma specifica* and not merely *in forma communi?*

A. 1. When the tenor or contents of its decrees are inserted in the instrument of confirmation.[13] 2. When, in the absence of the above, these phrases are used: *ex certa scientia; proprio motu;*[14] *ex plenitudine potestatis; non obstante*[15] *lege aut consuetudine in contrarium*, or *explentes omnes juris et*[16] *facti defectus.* 3. The *recognitio* by the Sacred Congregation is not sufficient; the confirmation must be given by *letters Apostolic.*[17]

172. In case of doubt whether a council is approved in forma specifica or only in forma communi, canonists commonly hold that it is approved merely in forma communi.

173. *Q.* Can bishops in particular cases relax in their dioceses the decrees of provincial or national councils?

A. 1. They cannot, in case these councils are confirmed in forma specifica; for, as Benedict XIV.,[18] quoting from Fagnanus, says: "Statuto confirmato in forma specifica, *cum naturam inducrit legis Pontificiae*, nulli inferiorum fas est derogare." 2. They may do[19] so if these councils are approved only in forma communi, excepting,[20] however, in those cases where such councils reserve to themselves the[21] power to dispense in their decrees.

[12] De Syn. Dioec., l. c. [13] Suarez, De Leg., lib. viii., cap. xviii., n. 5.
[14] Ib., n. 6. [15] Bened. XIV., De Syn., lib. xiii., cap. v., n. 11.
[16] Reiff., lib. ii., tit. 30, n. 8. [17] Bouix, De Episc., vol. ii., p. 394.
[18] L. c., n. 11. [19] Ib. [20] Cfr. our Notes, p. 438.
[21] Kenrick, Mor., Tract. 4, pars. i., n. 49.

174. *Q.* Is the Second Plenary Council of Baltimore approved in forma specifica?

A. 1. It is not; for the *Decretum* of the Propaganda, dated January 24, 1868, *Pro Recognitione Concilii* (Pl. Balt. II.), has none of the marks above given of the *confirmatio in forma specifica.* This appears from the decree itself, which reads: "Eadem S. Congr., ejusdem Concilii (Pl. Balt. II.) acta et decreta, diligenti inquisitione adhibita, expendit, paucisque exceptis correctionibus et animadversionibus, eadem ut ab omnibus ad quos spectant, inviolabiliter observentur, libentissime recognovit." [22]

2. Moreover, the "sola statutorum recognitio et approbatio a S. Congregatione facta, non est Pontificia confirmatio, saltem [23] in forma specifica." For decrees of councils are sanctioned in forma specifica, not by a "Decretum S. Congr.[24] pro recognitione concilii," but by apostolic letters or briefs.[25] Now, the decrees of Baltimore were confirmed, or rather reviewed, not by apostolic letters, but by the "Decretum S. C. de Prop. Fide" above-mentioned, as appears clearly from the Holy Father's reply to the fathers of Baltimore, September 2, 1867: "Quod attinet ad Acta Concilii (Pl. Balt. II.) congruum de eisdem Actis, a nostra Congr. Fidei Prop., praeposita, accipietis responsum." [26]

175. From what has been said we infer that it is allowed to appeal to the Propaganda from the decrees of the Second Pl. C. of Baltimore, since *confirmatio* [27] *in forma communi* does not remove the *defectus juris* [28] that may be contained in its enactments. It may be objected that it can scarcely happen that a defective decree be enacted by a provincial or

[22] Ap. Conc. Pl. Balt. II., p. 136.
[23] Bouix, De Episc., vol. ii., pp. 394, 395. Paris, 1873.
[24] Cfr. Conc. Pl. Balt. II., p. 136.
[25] Cfr. Bened. XIV., De Syn. Dioec., lib. xiii., cap. iii., n. 4.
[26] Ap. Conc. Pl. Balt., p. 135. [27] Cfr. Bouix, l. c., p. 395.
[28] Craisson, Man., n. 87.

national council and yet be returned[29] by the S. Congr. without having been corrected. This we cheerfully admit. Yet the case is not impossible, as Bouix shows.

176. It must be observed here that the confirmatio in forma specifica merely adds authority to the decrees of provincial or national councils, but does not, except when these decrees are inserted in the Corpus Juris Communis, extend their binding force beyond the respective province or nation, nor upon the entire Church.[30]

[29] Bouix, l. c., p. 395, 396. [30] Bened. XIV., De Syn., ib. xiii., cap. 3 n 5.

CHAPTER XI.

RULES FOR THE INTERPRETATION OF LAWS.

177.—I. *Ex parte causae efficientis*, there are four sorts of interpretations: 1, *interpretatio principis*, or that which is given by the lawgiver himself; 2, that which is established by lawful customs (*interpretatio usualis*); 3, or given by judges (*interpretatio judicis*); 4, or by learned men (*interpretatio doctrinalis*). The explanation of laws, as made by the lawgiver—*i.e.*, by the Pope, œcumenical council, and bishops—is authoritative[1] and has the force of law (*interpretatio authentica, necessaria*); the same holds true of the *interpretatio usualis*. The construction of laws, as made by judges of courts, binds only the actual parties to the suit, who alone are obligated to abide by the judge's rulings or explanations[2] of the law. The explanation which is given by theologians and[3] canonists, though always deservedly held in high esteem, need not, as a rule, be adhered to.

178.—II. *Ex parte causae formalis* or *ex naturae ipsius interpretationis*,[4] the construction of laws is: 1, declaratory—*i.e.*, explanatory of the words of the law; 2, corrective—*i.e.*, favorable; 3, restrictive—thus,[5] penal laws must be construed strictly; 4, extensible, by which laws are extended to similar cases.[6]

179. *Q.* What are the chief rules for the interpretation of civil laws or statutes?

[1] Our Notes, pp. 438, 439.
[2] Craiss., n. 238.
[3] Reiff., lib. i., tit. 2, n. 362–306.
[4] Ib., n. 365.
[5] Blackstone, Introd., sect. 3, p. 21.
[6] Reiff., l. c., n. 370–374.

A. 1. The title of the act (or statute) and the preamble to the act are, strictly speaking, no parts of it.[7] 2. The real intention (of the lawgiver) will always prevail over the literal sense of terms.[8] 3. The words of a statute are to be taken in their natural and ordinary import and signification.[9] Other rules may be seen in Kent and Blackstone.[10] These rules may be applied also to ecclesiastical laws.[11]

180. It may not be amiss here to add that Pope Pius IV., in his constitution "*Benedictus Deus*," confirming the decrees of the Council of Trent, enacted very severe penalties against all "qui ausi fuissent ullos commentarios, glossas, adnotationes, scholia, ullumque omnino interpretationis genus super ipsius Concilii (Tridentini) decretis quocumque modo edere."[12] This prohibition reaches no other councils.

The Regulae Juris Canonici may be seen in Craisson.[13]

[7] Kent, Com., vol. i., part iii., sect. 20, p. 460–463. [8] Ib., p. 462. [9] Ib.
[10] Introduct., sect. 3, p. 21.
[11] St. Liguori, lib. i., n. 200. Reiffenst., l. c., lib. i., tit. 2, n. 382–447.
[12] Ap. Soglia, vol. i., p. 12, § 7. [13] Man., n. 241 seq.

PART II.

OF PERSONS PERTAINING TO THE HIERARCHY OF JURISDICTION IN GENERAL—i.e., OF ECCLESIASTICS, AS VESTED WITH JURISDICTIO ECCLESIASTICA IN GENERAL.

CHAPTER I

DEFINITION OF THE CHURCH—MEANING OF THE WORD HIERARCHY IN GENERAL.

181.—I. The Church is defined: "Societas externa, visibilis, atque ad finem mundi duratura, completa et independens, distincta quoque, ac pro fine habens, omnibus hominibus procurandi media ad assequendam vitam aeternam."[1] Let us explain this definition.

182.—1. The Church is a society; for she is named in Sacred Scripture a kingdom,[2] a city that is set on a mountain,[3] etc. These symbols clearly imply that she is[4] a society. Theologians also prove that she is external, visible, and indefectible.

183.—2. The Church is, secondly, a perfect and independent society. A society is perfect when it is complete in itself, and therefore contains within itself adequate[5] means to attain its end. That our Lord has given his Church means sufficient to attain her end is evident from various texts of

[1] Craisson, l. c., n. 244. [2] Matt. iv. 17. [3] Ib., v. 14.
[4] Bouix, De Princip., p. 499. [5] Tarqu., Jur. Eccl. Publ. Inst., n. 6, 42.

Sacred Scripture.[6] A society is independent when it is not subject to the authority of any other society.[7] Now, every person in the world is bound to obey the Church in matters pertaining to the *sanctificatio animarum*.[8] But if no individual is exempt from the authority of the Church, it is evident that no body of individuals—*i.e.*, no society—is de jure exempt from it. The Church, therefore, is not subject to civil society, but[9] entirely independent of it; nay, more, civil society, as far as the *sanctificatio animarum* is concerned, is subordinate to the Church.

184.—3. The Church, thirdly, is distinct though not separate from civil society.[10]

185. From what has been said we infer: 1. The Church is not merely a corporation (*collegium*) or part of civil society. Hence, the maxim[11] is false, "Ecclesia est in statu," or, the Church is placed under the power of the state. 2. The Church is rightly named a *status* or state. This is proved by Soglia[12] in these words: "Ex definitione Puffendorfii, status est conjunctio plurium hominum, quae imperio per homines administrato, sibi proprio, et aliunde non dependente, continetur. Atqui ex institutione Christi, Ecclesia est conjunctio hominum, quae per homines, hoc est, per Petrum et Apostolos, eorumque successores administratur cum imperio sibi proprio, nec aliunde dependente; ergo Ecclesia est status."

186. The members of the Church[13] are divided into two classes: 1. Clerics or ecclesiastics (*clerici*), *i.e.*, those who belong to the *hierarchia*[14] *ordinis;* 2, Laics (*laici*), *i.e.*, the rest of the faithful.[15]

[6] Matt. xviii. 18, xxviii. 18, 19; Luc. x. 16; Jo. xxi. 15–18
[7] Craisson, Man., n. 245.
[8] Matt. xviii. 17. Cfr. Prop. 19, 20 of Syllab. 1864.
[9] Bouix, De Princip., p. 507. [10] Salzano, vol. i., pp. 18, 19.
[11] Bouix, De Princip., p. 509. [12] Vol. i., p. 137. [13] Tarqu., l. c., p. 92.
[14] Soglia, vol. i., p. 144. [15] Devoti, lib. i., tit. 1, § 1, p. 72.

187.—II. *Meaning of the term Hierarchy* (*Hierarchia*).—The words hierarchy, sacred power (*sacer principatus*), or pre-eminence (*sacra praefectura*) are synonymous.[16] The term hierarchy, taken subjectively, denotes the body of persons having sacred or ecclesiastical power; as such, it is defined: "Collectio personarum, quatenus potestatem seu praecellentiam sacram variis gradibus participantium";[17] taken objectively, it signifies the power itself in sacred things; as such, it is defined: "Potestas seu praecellentia sacra quatenus a pluribus personis, variis gradibus participata."[18] Observe here, we use the word power both for the *potestas ordinis* and the *potestas jurisdictionis*.

188. The word hierarchy, therefore, comprises three things: 1, sacred power or ecclesiastical authority; 2, a number of persons possessing it; 3, rank and gradation among these persons.[19] The hierarchy, therefore, whether of order or jurisdiction, is vested in an organized body of ecclesiastics; the Roman Pontiff is the head of this organization.

189. *Division of the Hierarchy of the Church.*—1. By reason of its origin, the hierarchy is divided into divine—that, namely, which was instituted by our Lord, and consists of bishops, priests, and ministers;[20] and into ecclesiastical—or that which was developed by ecclesiastical authority, *v.g.*, the dignity of patriarchs,[21] primates, archbishops, and the like. 2. By reason of the sacred power vested in ecclesiastics, it is divided into, 1, the *hierarchia magisterii;* 2, *hierarchia*[22] *jurisdictionis;* 3, *hierarchia ordinis;* for ecclesiastical power comprises, 1, the power[23] to teach; 2, to govern; 3, to perform sacred acts or functions—*i.e.*, to exercise the *potestas ordinis*. As, however, the *hierarchia magisterii* is virtually[24]

[16] Bouix, l. c., p. 513. [17] Ib., p. 514. [18] Ib. [19] Ib., p. 515.
[20] Conc. Trid., sess. 23, cap. iv., can. 6. [21] Bouix, l. c., pp. 515, 516.
[22] Ib., p. 521. [23] Cfr. Craiss., n. 248.
[24] Cfr. Soglia, vol. i., p. 143.

contained in the *hierarchia jurisdictionis*, canonists generally distinguish only the *hierarchia ordinis* and *jurisdictionis*.

190. In the present volume, we shall discourse merely on the *hierarchia jurisdictionis*. We shall, 1, give a correct idea of the nature of the *jurisdictio ecclesiastica;* this will form the Second Part of this book; 2, show of what persons the *hierarchia jurisdictionis* is composed—*i.e.*, in whom the *jurisdictio ecclesiastica* is vested; this will make up the Third Part of this work.

CHAPTER II.

NATURE AND OBJECT OF ECCLESIASTICAL JURISDICTION.

ART. I.

Difference between the Power of Jurisdiction and that of Order.

191. On this head some writers sin by excess, affirming that the power[1] of jurisdiction (*potestas jurisdictionis*) is essentially different from the power of order (*potestas ordinis*);[2] others sin by defect, asserting that these two powers are not even accidentally distinct one from another or separable. The correct view seems to be this: The hierarchy of the Church is essentially one; the *hierarchia* or *potestas ordinis* and the *hierarchia* or *potestas jurisdictionis* are distinct from each other only in this, that they are different forms or modes of one and the same *hierarchia*.[3] While the two powers, therefore, are not essentially disjointed, separate, or distinct, they are nevertheless separable, and therefore accidentally, at least, distinct one from the other.[4]

192.—I. That the *potestas ordinis* may be separated from the *potestas jurisdictionis* is evident from this, that the latter may be restricted, while the former[5] can neither be taken from nor diminished in bishops, priests, or sacred ministers, as appears from these words of the Council of Trent:[6]

[1] Cfr. Phillips, Kirchenr., vol. ii., p. 129. Ratisbon, 1857.
[2] Craiss., n. 250.
[3] Phillips, l. c., p. 129.
[4] Cfr. Conférences Eccl. d'Angers, tom. i., conf. 1, qu. 6, p. 277. Cfr. Phillips, l. c., p. 130.
[5] Cfr. Craiss., n. 251.
[6] Sess. xxiii., cap. iv. Cfr. S. Thomas 2, 2, qu. 39, art. 3, In Corp.

"Forasmuch as, in the Sacrament of Order, a character is imprinted which can neither be *effaced* nor *taken away*, the holy synod, with reason, condemns the opinion of those who assert that the priests of the New Testament have only a *temporary* power, and that those who have once been rightly ordained can again become *laymen*." The *potestas ordinis*, therefore, is inamissible, cannot be restricted either in itself[7] or as to persons and places; it is, moreover, equal and full or supreme in all bishops alike.[8]

193. On the other hand, the *potestas jurisdictionis episcopalis* may be limited, 1, as to *place* or countries: thus St. Peter admonishes bishops: "Feed the flock of God which is *among you*"[9]—that is, not the *entire* flock, but the *particular* portion assigned[10] them. St. Cyprian[11] expressly writes: "Singulis pastoribus *portio* gregis adscripta est." 2. As to *matters:* some have erroneously asserted that every bishop has *absolute* power[12] in his diocese. This is false: 1. Because œcumenical councils can make general laws—*i.e.*, laws binding on[13] all the bishops relative to ecclesiastical matters or discipline; the Roman Pontiffs have the same[14] power; nay, even national or provincial councils have power to[15] enact disciplinary laws obligatory on the bishops and metropolitans of the respective provinces; now, it is evident that if bishops are obliged, in the government of their dioceses, as undoubtedly they are, to observe these laws, their power is not absolute or unbounded as to matters. 3. As to *persons:* thus, members of religious communities, male and female, were exempted from episcopal authority already in the first ages[16] of the Church. The Council of Carthage (525) decreed: "Erunt igitur omnia omnino monasteria, sicut

[7] Bouix, l. c., p. 547.
[8] Ib.
[9] 1 Petr. v. 2; cfr. ad Titum, i. 5; Act. xx. 28.
[10] Bouix, l. c., p. 548.
[11] Epist. 55 ad Cornelium Papam.
[12] Bouix, l. c., pp. 546 and 551.
[13] Ib., p. 551.
[14] Ib., p. 552.
[15] Ib
[16] Ib., p. 554.

semper fuerunt, a conditione clericorum, modis omnibus libera.'"[17]

194.—II. That the *potestas ordinis* is distinct from the *potestas jurisdictionis* is proved secondly from this, that the *potestas ordinis episcopalis* may exist without any *jurisdictio*. Thus it was ordered by the Council of Nice (325) that Meletius, Bishop of Thebaid, should be deprived of all power and[18] authority (*potestas jurisdictionis*) but yet retain the character, dignity, and name of bishop (*potestas ordinis*). Moreover, the ancient *chorepiscopi*, though true bishops, were not possessed of any *jurisdictio ordinaria*. Finally honorary bishops were formerly created to whom no diocese was assigned. It is evident, therefore, that a person may have the *potestas ordinis episcopalis* without having any *jurisdictio*. On the other hand, it is certain that a person may have *jurisdictio episcopalis* without being vested with the *potestas ordinis episcopalis*. Thus a bishop elect[19]—*i.e.*, one appointed already by the Pope though not yet consecrated—may govern his diocese with full authority as soon as he has received the bulls. Chapters, also, or rather vicars-capitular—with us, administrators—govern dioceses,[20] though not vested with the potestas ordinis episcopalis. We observe here, what is said of the powers of order and jurisdiction, as vested in bishops, is also applicable to these powers as vested in priests and sacred ministers; we argued from the episcopal ordo and jurisdictio merely, for[21] the reason that the question is disputed chiefly as regards bishops.

195.—III. That the *potestas ordinis* is distinct from the *potestas jurisdictionis* is finally proved: 1. Because the *potestas ordinis* is conferred by ordination; the *potestas jurisdictionis* by legitimate[22] mission. 2. The former is alike in all that have the same ordo; the latter varies in degree, even in

[17] Labbe, tom. iv. Col., 1649. [18] Bouix, l. c., p. 555. [19] Ib., p. 559.
[20] Cfr. Soglia, vol. ii., p. 9. [21] Bouix, l. c., p. 546.
[22] Soglia, l. c., p. 9.

ministers or officials of the same rank. 3. The *potestas ordinis* is not, properly speaking,[23] capable of delegation, while the *jurisdictio* is.

196. The distinction of the *ordo* and *jurisdictio*, as given by the scholastics, is this: The *potestas ordinis* refers to the real body of Christ in the Blessed Eucharist; the *potestas jurisdictionis* to the mystical—*i.e*, the faithful.[24] This distinction, though correct in the main, must not be pushed too far, as though it meant a radical difference between[25] the two powers. For, as in the Blessed Trinity there are three persons and only one substance, so there are three branches or species of hierarchies—namely, the potestas magisterii, the potestas ordinis, and the potestas jurisdictionis; yet withal, there is but one central power or hierarchy.[26] These powers, therefore, are accidentally but not radically or fundamentally distinct from each other.

Art. II.

What is the precise extent or object, 1, of the Potestas Ordinis; 2, of the Potestas Jurisdictionis?

197.—I. *Potestas Ordinis.*—The term *ordo* is taken, 1, "pro ipsa actuali ordinatione"; 2, "pro statu ministerii[27] sacri." We ask: To what objects does the *potestas ordinis* extend? Craisson answers by this *proposition:* "Ad potestatem ordinis referenda est quaelibet conficiendi vel conferendi sacramenta aut sacramentalia potestas, quam Christus *vel* Ecclesia alicui ordinum gradui alligavit."[28] As the *potestas ordinis* is more fully explained by theologians, we shall add but a few words without dwelling further on it.

198. The proposition just given embodies this principle:

[23] Craiss., n. 256. [24] Ap. Phillips, l. c., pp. 139, 140. [25] Cfr. Craiss., n. 260.
[26] Phillips, l. c., p. 139. [27] Ferraris, V. Ordo, art. i., n. 1.
[28] Man., n. 257. Cfr. Soglia, vol. i., pp. 143, 144.

Sacramental functions are annexed to a determinate ordo in such manner as to be performable[29] only by a person in the respective order. This principle, however, admits of various exceptions. Thus, the bishop is the proper minister of holy orders; yet minor orders may be conferred by a priest. Again, the administration of the sacrament[30] of Confirmation, though attached to the ordo of episcopacy, may be administered by a priest duly authorized. The *potestas*[31] *ordinis* is imparted by ordination.

199.—II. *Potestas Jurisdictionis.*—In the Roman civil law, *jurisdictio* meant simply the judicial authority—*i.e.*, the power to take cognizance of causes by[32] judicial tribunals or judges of courts. In canon law, the term *jurisdictio* is taken in a broader sense; and from the time of Gregory the Great it has been[33] employed chiefly to express the entire legislative, judicial, and executive power inherent in the Church;[34] it is therefore defined: "Omnis ea imperii potestas, qua Ecclesia regitur et gubernatur."[35] We say: *Imperii potestas*—*i.e.*, authority which consists not merely in teaching and exhorting, but in enacting and enforcing laws.[36] Jurisdiction is also named *potestas publica*, in contradistinction to the *private authority*, *v.g.*, of parents over children.[37] Besides the above, jurisdiction also embraces the power of defining articles of faith (*potestas magisterii*), of convoking and presiding over councils and the like.[38]

200. Jurisdiction is conferred by legitimate mission, which consists in what is termed "*legitima assignatio subditorum*[39] or *deputatio legitima ad exercendum munus spirituale.* Acts of jurisdiction performed by[40] persons not properly deputed are null and void.

[29] Cfr. Phillips, Kirchenr., vol. ii., p. 141. [30] Ib. p. 142.
[31] Soglia, l. c., p. 144. [32] Bouix, l. c., p. 545. [33] Phillips, l. c., pp. 5, 6.
[34] Soglia, vol. i., p. 145 seq. [35] Ib. [36] Ib.
[37] Reiff., lib. i., tit. 29, n. 3. [38] Bouix, l. c., p. 545.
[39] Soglia, l. c. [40] Cfr. Conc. Trid., sess, xxiii., can. 7, 8.

201. *Q.* Is the Church possessed of jurisdiction in the proper sense of the term?

A. Protestants contend that the entire power of the Church consists in the right to teach and exhort, but not in the right to command, rule, or govern; whence they infer that she is not a perfect society[41] or sovereign state. This theory is false; for the Church, as was seen, is vested *jure divino* with power, 1, to make laws; 2, to define and apply them (*potestas judicialis*); 3, to punish those who violate her laws (*potestas coercitiva*).[42]

202. The punishments inflicted by the Church, in the exercise of her coercive authority, are chiefly spiritual (*poenae spirituales*), *v.g.*, excommunication,[43] suspension, and interdict. We say, *chiefly*, for, according to Soglia,[44] the Church can inflict at least light corporal punishments, such as detention in monasteries, imprisonment,[45] and the like, not, however,[46] the penalty of death.

203. This coercive power is proved not only from Sacred Scripture,[47] but also from the constant practice of the Church—*i.e.*, from the fact that the Church has,[48] in all ages, inflicted corporal punishments.[49]

204. *Q.* What objects or things fall under ecclesiastical jurisdiction?

A. Some things come directly within the reach or compass of the Church's authority, others but indirectly.[50] 1. Now, those matters and acts fall directly under ecclesiastical jurisdiction which are essentially spiritual. But how are temporal things distinguished from spiritual? Certainly not because the former are corporeal, visible, or external, while the latter are invisible or immaterial; otherwise, sacraments,

[41] Ap. Soglia, vol. i., p. 145. [42] Cfr. ib., p. 152. [43] Ib., p. 153.
[44] L. c., p. 155. Cfr. Syllab., n. 24. [45] See our Notes, n. 413.
[46] Reiff., lib. i., tit. 29, n. 25, 26.
[47] 2 Cor. xiii. 10; ib., x. 6; 2 Thessal. iii. 14.
[48] Soglia, l. c., p. 153. [49] Cfr. Craisson, Man., n. 262. [50] Ib., n. 263.

being visible signs, would have to be accounted[51] temporal objects. Spiritual things, therefore, are distinguished from temporal by reason of their respective ends. Hence, those matters are spiritual[52] which have an exclusively spiritual[53] end—namely, the salvation of the soul—even though they be of a corporal structure. 2. On the other hand, things are temporal, and come within the cognizance of the civil power, when, even[54] though not corporeal or visible, their immediate end is temporal or civil—*i.e.*, when they are ordained directly for the welfare of civil society. 3. Temporal things, however, fall directly under the Church's authority, so far as they are capable of becoming objects of supernatural acts and virtues or also vices. Suarez[55] writes: "Quia fere tota materia temporalis ad spiritualem finem ordinari potest, et illi subest, sub illo respectu inducit quamdam rationem spiritualis materiae, et ita potest ad leges canonicas pertinere."

205. There is still another class of things, those, namely, which pertain at the same time, though not under the same respect, to both powers—the spiritual and the temporal—and are consequently named *quaestiones mixtae* or *mixti*[56] *fori*. Now, things may fall under the cognizance of both powers, and therefore become *mixti fori* chiefly in three ways: 1. When they have two ends—one civil, the other ecclesiastical or spiritual. Marriage is a case in point.[57] All questions bearing on the sacramental character of matrimony, *v.g.*, the validity of marriages or betrothals, fall under the Church's jurisdiction. Questions, however, respecting the property of married persons,[58] inheritance, and the like, are within the competence of civil courts. 2. When, for the better execution of laws,[59] the Church and state assist

[51] Phillips, vol. ii., p. 534. [52] Ib., p. 536. [53] Soglia, vol. i., p. 320.
[54] Phillips, l. c., p. 536. [55] De Lege, lib. ii., cap. 11, n. 9.
[56] Phillips, l. c., p. 542. [57] Ib., p. 545.
[58] Bened. XIV., De Syn., lib. ix., cap. ix., n. 3, 4.
[59] Phillips, l. c., p. 543.

one another, *v.g.*, in the suppression of rebellion or heresy. 3. By historical evolution.[60]

206. Things, moreover, may come within the jurisdiction of the Church not only by reason of their nature[61] or character, as we have just seen, but also because of the persons[62] to which they refer. Thus, according to the common law of the Church, ecclesiastics are not amenable to the jurisdiction of civil courts; the bishop[63] is the only competent judge in all their causes. We say, according to the common law of the Church; for, at present, this privilege is almost everywhere greatly[64] restricted. Ecclesiastics may also implead and be impleaded in many instances in civil courts, especially in non-Catholic countries.[65]

[60] Phillips, l. c., p. 544. [61] Cfr. Benedict XIV., l. c., n. 8. [62] Ib.
[63] Ib., n. 9. Cfr. Soglia, vol. i., § 58. [64] Bened. XIV., l. c., n. 11, 12.
[65] Our Notes, p. 385.

CHAPTER III.

DIVISION OF ECCLESIASTICAL JURISDICTION.

207. Jurisdiction in general is distinguished into ecclesiastical and civil or political.[1] Ecclesiastical jurisdiction, of which we here treat, is divided:

208.—1. Into *jurisdictio fori interni et fori externi.* By *forum* is meant either the place of trials or the exercise[2] itself of judicial authority. 1. The *jurisdictio fori interni* is that which refers primarily and directly to the private utility of the faithful[3] taken individually; it is exercised chiefly in the administration[4] of the sacraments. The jurisdictio fori interni is subdivided into the *jurisdictio fori poenitentialis*, or that which is exercised only in the tribunal of penance, and into the *jurisdictio fori interni extrapoenitentialis*—that, namely, which is exercised out of the confessional.[5] 2. The *jurisdictio fori externi* is that which relates primarily and directly to the public good of the faithful taken as a body.[6] To make laws, decide controversies on faith, morals, or discipline, punish criminals, and the like are acts of the *jurisdictio fori externi.* Hence, a person may have jurisdiction *in foro interno* but not *in foro externo, v.g.*, parish priests; and, vice versa, one may possess jurisdiction *in foro externo* without having any *in foro interno, v.g.*, vicars-general not yet in sacred orders but merely in clerical tonsure. Civil society has no jurisdictio fori interni.[7]

209.—2. Into *universal* and *particular.* By *jurisdictio uni-*

[1] Reiff., lib. i., tit. 29, n. 7. [2] Craiss., n. 277. [3] Bouix, De Princ., p. 560.
[4] Craiss., n. 277. [5] Bouix, l. c., p. 561. [6] Ib. [7] Ib., p. 562.

versalis we mean that which is unlimited as to, 1, persons; 2, places or countries; 3, matters subject to the authority of the Church. Such was the jurisdiction of the Apostles; such is, at present, that of the Roman Pontiffs and of oecumenical councils.[8] By *jurisdictio particularis* we mean that which is restricted either as to, 1, persons; 2, or places; 3, or things. When particular jurisdiction is confined to a certain class of persons, but not[9] to any particular place, it may be exercised everywhere. Thus, prelates of regulars can *everywhere* exercise jurisdiction over monks subject to them.[10]

210.—3. Into *voluntary* and *contentious* jurisdiction.[11] Voluntary jurisdiction (*jurisdictio voluntaria—jurisdictio extra-judicialis*) is that which the bishop or superior can exercise without observing[12] the formalities required by canon law for regular trials (*absque forma judicii*); it includes the power to inflict censures extra-judicially. Contentious jurisdiction (*jurisdictio contentiosa—jurisdictio judicialis*) is that which is exercised *cum forma judicii*[13]—*i.e.*, according to the forms which canon law prescribes for trials. A prelate cannot, either licitly or validly, exercise contentious jurisdiction out of his own[14] territory.

211.—4. Into *ordinary* and *delegated* jurisdiction. By *jurisdictio ordinaria*[15] we mean that which is, by law, whether divine or ecclesiastical, or by custom or privilege, permanently[16] attached to an ecclesiastical office or dignity.[17] Hence, a *judex ordinarius* is one who exercises jurisdiction by virtue of his office, and therefore in his own name (*jure proprio, jure suo, jure officii sui*).[18]

212. The title *ordinarius*, however, is not applied to every

[8] Bouix, l. c., p. 562. [9] Ib. [10] Bouix, De Princip., p. 563.
[11] Reiff., lib. i., tit. 29, n. 8, 9. [12] Craisson, Man., n. 281.
[13] Bouix, De Princip., p. 565. [14] Craisson, l. c.
[15] Phillips, Kirchenr., vol. ii., p. 146. [16] Ib., vol. vi., pp. 752, 753.
[17] Phillips, Lehrb., p. 369. [18] Soglia, vol. ii., p. 448.

one having *jurisdictio ordinaria*,[19] but to those only who have *jurisdictio ordinaria in foro externo, v.g.*, bishops, vicars-general, etc. Parish priests have *jurisdictio*[20] *ordinaria* only *in foro interno*, but not *in foro externo*, and are not, consequently, *ordinarii*.[21]

213. As the *jurisdictio ordinaria* attaches to the office itself (*officium*), it is always obtained simultaneously with the office, and is not lost until the office is either[22] resigned or lawfully taken away.

214. *Jurisdictio delegata* is that which a person exercises, as a rule, only by order or commission[23] of some one having jurisdictio ordinaria; a *delegatus*, therefore, acts not by virtue of his office or in[24] his own name, but in the name of another. We say, "as a rule," for *jurisdictio delegata* is exceptionally[25] given also by the law itself. Such, for instance, is the power which the Council of Trent granted to bishops in regard to exempted regulars. Hence, *delegati* have jurisdiction either *ab homine* or *a jure—i.e.*, they are commissioned or delegated either by a *person* having *jurisdictio ordinaria* or by the *jus commune* and custom.[26] Bishops, for example, are in many instances empowered by the jus commune, *v.g.*, by the Council of Trent,[27] to act *tanquam sedis apostolicae*[28] *delegati*.

215. Bishops receive *jurisdictio delegata a jure* when the jus commune[29] uses the phrase *tanquam sedis apostolicae delegati*, or "*etiam* tamquam sedis apostolicae delegati." When bishops proceed simply "*tanquam* sedis apostolicae delegati," it is allowed to appeal from them to the Sovereign[30] Pontiff only, but not to the metropolitan; but if they

[19] Bouix, De Princip., p. 567.
[20] Craisson, Man., n. 282.
[21] Cfr. Conc. Trid., sess. xxiv., cap. i.
[22] Soglia, l. c., p. 449.
[23] Phillips, Lehrb., p. 369.
[24] Reiff., lib. i., tit. 29, n. 12.
[25] Phillips, l. c.
[26] Craisson, l. c., n. 285.
[27] Sess. v., cap. i.; sess. vi., c. 2 de Ref., etc.
[28] Bouix, l. c., p. 570.
[29] Craisson, Man., n. 285.
[30] Reiff., l. c., n. 36.

act "*etiam* tamquam," etc.,[31] an appeal lies to the archbishop. Observe, whenever bishops are authorized to proceed[32] *etiam* tamquam, etc., they are vested both with *jurisdictio ordinaria*[33] and *jurisdictio delegata*, and may act by virtue of either power.[34]

216.—5. Into *jurisdictio immediata* and *jurisdictio mediata*.[35] Jurisdiction is immediate when it can be exercised at all times, not merely in case of necessity; such is the authority of the Pope throughout the entire Church, of the bishop in his diocese, and of the parish priest in his parish. On the other hand, mediate jurisdiction is that which cannot be exercised save in certain cases determined by law; such, for instance, is the authority of metropolitans over the subjects[36] of their suffragans. We say "*subjects of suffragans*,"[37] for over the suffragans themselves archbishops have *jurisdictio ordinaria*, and therefore *immediata*.[38]

217. *Q.* What is the nature of the jurisdiction vested in the Supreme Court of the United States?

A. The *original* jurisdiction of the Supreme Court is confined to those cases[39] which affect ambassadors, other public ministers, and consuls, and to those cases in which a State is a party. The *appellate* jurisdiction of the Supreme Court exists only in those cases in which it is affirmatively given.[40] Its whole appellate jurisdiction depends upon the regulations of Congress.

[31] Reiff., l. c., n. 37. Cfr. Conc. Trid., Sess. xxii., cap. x., d. R., and Sess. vi., cap. iv. [32] Craiss., n. 287. [33] Bouix, De Paroch., pp. 281, 282. Paris, 1867
[34] Reiff., l. c., n. 38. [35] Craiss., n. 288.
[36] Cfr. Phillips, Kirchenr., vol. vi., p. 829 seq. Ratisbon, 1864.
[37] Reiff., lib. i., tit. 31, n. 40. [38] Ib., n. 35.
[39] Kent, Com. i., p. 314. New York, 1832. [40] Ib., p. 324.

CHAPTER IV.

ON THE MODE OF ACQUIRING ECCLESIASTICAL JURISDICTION, IN GENERAL.

ART. I.

Of the Subject of Ecclesiastical Jurisdiction.

218. The subject of ecclesiastical jurisdiction is twofold: active and passive. By the *passive subject* we mean all persons falling under the authority of the Church; by the *active subject*, those who are vested with or have jurisdiction.[1] With regard to the passive subject, we say: All baptized persons come under the dominion of the Church. We say "*baptized* persons"; for not only Catholics, but also heretics, are, at least *per se*,[2] subject to the laws of the Church; infidels are not so subject.[3]

219. As to the *active subject*,[4] we merely observe: Those persons only are vested with jurisdictio ecclesiastica who have obtained it in a canonical manner, either by having received an office (officium), or by having been delegated by one having an office. In the following chapters we shall therefore show, 1, how persons receive jurisdictio delegata —*i.e.*, are delegated by those holding an office; 2, how they obtain jurisdictio ordinaria—*i.e.*, are appointed to ecclesiastical offices. In the next article, we shall premise some observations relative to the proper or canonical title of jurisdiction.

[1] Craiss., n. 289. [2] Tarquini, p. 78, n. 64. [3] Cfr. 1 Cor. v. 12.
[4] Tarqu., l. c., p. 91.

Of the requisite Title to Jurisdiction, and its Necessity.

220. By the word title (*Titulus*), in general, we here mean *the act by which power is given to a person to perform ecclesiastical functions.*[5]

221. *Division.*—Titles are true or false. They are true or legitimate (*Titulus verus*)—*i.e.*, not vitiated or defective, 1, when they are conceded in due form; 2, to persons properly qualified; 3, by those who are vested with libera potestas.[6] Titles are false (*Titulus falsus*) when they are defective as to any of the above conditions. A false title, when deemed legitimate by others, is also called *Titulus putativus.*

222. A title may be false or illegitimate in three ways:[7] 1. When it has in no way been granted by the superior, or not for the case, place, time, or person in question. Hence, the false title in this case is named *Titulus fictus.* 2. When, though given by the proper superior, and of itself capable of conferring jurisdiction, it is nevertheless rendered void by some occult defect, either (*a*) in the grantor; thus, if the death of the bishop were unknown, his vicar-general would have but a colored title; (*b*) or in the grantee, *v.g.*, by occult irregularity, or if he has been deprived of his title, and this fact is unknown; (*c*) or in the concession itself of the title, *v.g.*, if secret simony intervened. A title defective in these three ways is termed *Titulus coloratus.* 3. When conceded by a superior who had no power to do so, *v.g.*, by the archbishop, out of those cases where he may supply the negligence of suffragans; or if the title is indeed given by a competent superior, but is other-

[5] Craiss., n. 292 [6] Ib. [7] Ib., n. 293.

wise manifestly defective. Such title is a *Titulus simpliciter nullus.*

223. *Q.* Is a false title sometimes sufficient to obtain jurisdiction?

A. Craisson[8] thus answers: "Ubi deest titulus verus, sufficit falsus seu putativus, ad exercendam valide jurisdictionem tam delegatam quam ordinariam in utroque foro externo et interno; modo, 1, existat error communis; 2, ejus sit naturae vitium cui Ecclesia mederi possit; 3, titulus sit saltem coloratus."

224. The third condition, to wit, *modo titulus sit saltem coloratus,* is, however, not considered essential by all canonists; for it is a mooted[9] question whether a *titulus coloratus* is absolutely necessary. Many affirm that *error communis* is sufficient, without any title whatever. St. Liguori[10] thinks this a probable opinion. It is therefore probable that a priest can absolve validly even though he has,[11] in reality, no jurisdiction, provided it is believed by "error communis" that he has faculties. Hence, as Sanchez[12] says, a confessor approved for one year can validly absolve, even after the lapse of the year, if it is commonly believed that he still possesses faculties. So, also, a confessor from another diocese can absolve validly in a diocese[13] where he is not approved, if by "error communis" he is considered approbatus ad confessiones.

225. We say, the absolution in these cases is probably *valid:* is it also[14] *lawful?* In other words: Is it lawful for a confessor to administer the sacrament of penance with the above *jurisdictio probabilis,* given him by "error communis"? There are three opinions: the first denies; the second affirms; the third, which is the one embraced by St.

[8] Craiss., l. c., n. 294. [9] Bouix, De Judic., vol. i., p. 134. Paris, 1866.
[10] Lib. vi., n. 572. [11] Notes, p. 218. [12] Ap. Craiss., Man., n. 304.
[13] Cfr. Bened. XIV., Instit. 84, n. 14–23. Prati, 1844.
[14] Ib., n. 16.

Liguori,[15] holds that it is lawful to administer the sacrament of penance *cum jurisdictione tantum probabili*, only when there is *causa gravis necessitatis or magnae utilitatis*.[16]

[15] Lib. vi., n. 575. Mechliniae, 1852. [16] Cfr. Craiss., l. c., n. 306.

CHAPTER V.

ON THE MANNER OF ACQUIRING ECCLESIASTICAL JURISDICTION, IN PARTICULAR—MODE OF ACQUIRING JURISDICTIO DELEGATA.

226. By a delegate (*delegatus*) we mean, in general, a person empowered to act or exercise jurisdiction for another.[1] *Jurisdictio delegata*, as was seen, emanates either *a jure* or *ab homine*.[2]

227. *Q.* What persons have power to delegate—*i.e.*, confer *jurisdictio delegata* upon others?

A. All persons vested with *jurisdictio ordinaria* can,[3] as a rule, delegate others. But neither ordinary superiors nor *delegati ad universitatem*[4] *causarum* can, without the consent of the Pope (*inconsulto Principe*), commit their entire authority *in perpetuum*[5] to others; the reason is, as Ferraris,[6] speaking of the judex ordinarius, says: "Quia delegando alteri totam suam jurisdictionem, seu totum suum officium ipsi committendo, non tam censetur delegare quam omnino abdicare se officio suo ordinario, quod nequit fieri sine consensu Principis."

228. *Q.* Can *delegati—i.e.*, persons who themselves have but *jurisdictio delegata*—sub-delegate others?

A. Delegati are deputed (*a*) by the Pope or the Sacred Congregations; (*b*) by inferior ordinaries.[7]

I. A person delegated by the Pope or the Sacred Con-

[1] Cfr. Ferraris, V. Delegatus, n. 1–3. [2] Craiss., l. c., n. 306.
[3] Reiff., lib. i., tit. 29, n. 55. Cfr. Regula Juris in 6.
[4] Craiss., l. c., n. 312. [5] Bouix, De Judic., vol. i., pp. 144, 145
[6] V. Delegatus, n. 15. [7] Craiss., l. c., n. 308.

gregations[8] can, as a rule, sub-delegate others—*i.e.*, authorize them to act for him. We say, *as a rule;* for two exceptions must be admitted: 1, "Si sit electa industria personalis[9] delegati." Now, a *delegatus* is supposed to be chosen "ob industriam personalem" when, for instance, he is commanded in the *rescriptum delegationis* to attend personally[10] to the matter, *v.g.*, by the words, "per teipsum," or "personaliter exequaris"; 2, if the power delegated is a *nudum*[11] *ministerium*, *v.g.*, the execution of dispensations of marriages; yet, even in this case, sub-delegates may be employed, *v.g.*, to collect information or to ascertain whether *preces veritate nitantur*.[12]

229.—II. A person delegated by inferior ordinaries, *v.g.*, by bishops, cannot, as a rule, sub-delegate others.[13] We say, *as a rule;* because it is the common opinion[14] of writers that, when such person is delegated *ad universitatem causarum*, he can sub-delegate others. Bouix,[15] however, dissents partly from this opinion, and thinks it unsafe even for a *delegatus ad universitatem causarum* to sub-delegate others, save where a legitimate custom of the country sanctions it.

230. Rural deans[16] and pastors in the U. S. to whom a certain kind of causes or matters is collectively committed—*v.g.*, the power to grant, in a certain district, dispensations from one or two of the proclamations of the banns of marriage—would appear to be accounted *delegati ad universitatem causarum*,[17] and would seem, therefore, authorized to sub-delegate others with regard to particular cases.

231. *Q.* To what persons can jurisdiction be delegated?

A. Generally speaking, only to those who, 1, are free

[8] Cfr. Ferraris, V. Delegatus, Novae addit. ex aliena manu, n. 12.
[9] Bouix, De Judic., vol. i., p. 145.
[10] Cfr. Reiff., l. c., n. 60.
[11] Ferraris, l. c., n. 23, 24.
[12] Craiss., l. c., n. 308.
[13] Bouix, l. c., pp. 145, 146.
[14] Ib., p. 146.
[15] Ib.
[16] Cfr. Conc. Pl. Balt. II., n. 74.
[17] Craiss., l. c., n. 311.

from defects that debar a person from jurisdiction, and, 2, have the requisite qualifications.[18]

232.—I. Now, the defects (*vitia*) that disqualify a person to hold[19] *jurisdictio delegata* are, 1, *a natura*, *v.g.*, deafness, loss of speech, insanity, and the like; 2, *a lege*, *v.g.*, "excommunicatio non tolerata," infamy; 3, *a moribus*, *i.e.*, custom—thus, slaves and women cannot be *judices delegati*.[20]

233.—II. Of the necessary qualifications (*dotes*), some are required *in omni delegatione;* thus, as a rule, clerics only, and[21] not laymen, can be delegated; others are required in certain cases only. Besides, as a rule, a person, in order to be capable of being delegated by the Pope, "debet esse constitutus[22] in aliqua ecclesiastica dignitate, vel obtinere personatum aut canonicatum Ecclesiæ Cathedralis, aut esse officialis seu Vicarius Gen. Episcopi, vel prior conventualis." By "*prior conventualis*" are here meant also "praepositi, guardiani, aliique omnes quocunque nomine nuncupati superiores conventuales regularium."[23]

234. *Q.* Can an ecclesiastical or at least a civil cause of clerics be delegated or committed to a layman?

A.—1. Bishops and other prelates[24] inferior to the Pope cannot delegate to laymen either, 1, spiritual (*causae mere ecclesiasticae*, *causae spirituales*); 2, or criminal causes (*causae criminales*) of ecclesiastics; 3, neither can they, according to the more probable opinion,[25] assign to lay judges for judicial cognizance even the civil causes (*causae civiles*, *causae temporales*) of clerics.[26]

2. The Sovereign Pontiff may, however, commit to laics, *v.g.*, to kings, not only civil or temporal, but also a certain number of ecclesiastical or spiritual causes of clerics;[27] but he cannot subject *all* ecclesiastics and *all* causes of ecclesias-

[18] Craiss., l. c., n. 313. [19] Ferraris, V. Delegatus, n. 25, 26.
[20] Cfr. Reiff., l. c., n. 66. [21] Craiss., l. c., n. 315. [22] Reiff., l. c., n. 70.
[23] Ferraris, V. Delegatus, n. 31. [24] Reiff., lib. i., tit. 29, n. 88.
[25] Ib., n. 89–92. [26] Cfr. Craiss., l. c., n 316. [27] Reiff., l. c., n. 92.

tics to the civil tribunal; in other words, he has no power to do away *entirely* with the *privilegium fori.*[28]

235. *Q.* What should be the nature of the act of delegation *ab homine?*

A.—1. Delegated faculties are essential either to the validity of an act, *v.g.*, approbation for confessions; or only to the licitness of an act, *v.g.*, in the administration of sacraments, save that of penance.[29] In the *first* case, the *delegatio* must be positive—that is, express, or at least presumptive, provided the presumption rest upon signs that indicate actual consent (*consensus de praesenti*); internal consent is not sufficient[30] for approbation to hear confessions, nor for assistance at marriages, where the Tridentine Decree on clandestinity is published. In the *second* case—*i.e.*, when there is question merely of the licitness of an act, the *licentia rationabiliter praesumpta* or the *ratihabitio rationabiliter sperata*[31] is sufficient; this holds true, according to St. Liguori,[32] of the administration of baptism, confirmation, extreme unction, and the holy eucharist, and with us also of matrimony.[33]

236. Priests in the U. S. are strictly forbidden to baptize or marry parties from other dioceses who can easily recur to their pastor;[34] nay, the statutes of the various dioceses of this country, as a rule, prohibit priests from baptizing or marrying, not only those who belong to other dioceses, but also those who belong to other parishes or missionary districts. Thus, the statutes of Boston enact: "Prohibemus sub poena suspensionis ne ullus pastor, fideles ex altero (districtu) advenientes absque proprii eorum pastoris licentia matrimonio

[28] Reiff., l. c., n. 93.
[29] Craiss., n. 320.
[30] St. Liguori, lib. vi., n. 570. Mechliniae, 1852. Cfr. our Notes, p. 269.
[31] Craiss., n. 322.
[32] Lib. vi., n. 11, 173, 255, 722.
[33] Cfr. Reiff., lib. iv., tit. 3, n. 83, 84.
[34] Conc. Pl. Balt. II., n. 117, 227. See our Notes, p. 175.

conjungat, vel infantes baptizet." [35] The statutes of Newark enjoin the same [36] *sub gravi.*

237.—2. The *delegatio* should, moreover, be made known to the delegatus, and accepted, at least, implicitly by him.[37]

238.—3. The *delegatio* should be free; hence, if a superior gives delegated faculties altogether against his will, the act is invalid. We say *altogether;* for if he did so even out of *metus gravis et injustus*, his act would not, on that account, be invalid.[38]

239.—4. It need not be in writing, save in cases prescribed by law.[39]

240. In the use or exercise of *jurisdictio delegata*, the delegatus must state that he acts by virtue of delegated powers. Hence, bishops in the United States, when conferring upon their priests such faculties as they hold from the Holy See, as also in dispensing from impediments to marriage, use this form: "Vigore facultatum a S. D. N. Pio IX. nobis collatarum," etc., or similar formulas.[40]

[35] Syn. Boston. II., ann. 1868, tit. 4, n. 46. [36] Statuta Novarc, p. 12.
[37] Craiss., n. 323. [38] Ib., n. 324. [39] Ib., n. 325.

[40] However, these or similar formulas, except where the Papal indult requires it, and that on pain of nullity—*v.g.*, by the phrase *alias nullae sint*—are no longer necessary to the validity of the above dispensations or faculties. Hence, these dispensations and faculties, when granted by bishops in the U. S. informally—*v.g.*, orally, or even by telegraph, in some such simple words as "the dispensation or faculty is granted"—are valid, and, if there be sufficient cause for this mode of concession, also licit. For the above formulas are not, at least at the present day, prescribed on pain of nullity in the faculties given our bishops by the Holy See (Konings, n. 1628, q. 6).

CHAPTER VI.

MANNER OF ACQUIRING JURISDICTIO ORDINARIA.

ART. I.

Of the Institution or Establishment (Constitutio) of Offices to which Ecclesiastical Jurisdiction is attached.

241. *Q.* By what right is jurisdiction attached to ecclesiastical offices?

A.—I. *As to the Papal dignity or office*, it is certain that jurisdiction over the entire Church is immediately and directly[1] conferred by Christ upon the one who is elected Sovereign Pontiff. For, once canonically elected by the cardinals,[2] the Pope, without any further institution, confirmation, or collation, receives universal jurisdiction from Christ, and not from the cardinals, who have themselves no such jurisdiction.[3]

242.—II. Whether *bishops* hold jurisdiction in their respective dioceses immediately of God, or but mediately,[4] was much debated in the Council of Trent; no decision was arrived at, and the question is consequently still open. Whatever opinion we may choose to follow, it is universally[5] admitted, even by those who assert that bishops receive jurisdiction immediately from God and not from the Pope, that the *exercise* of the jurisdictio[6] episcopalis depends upon the Sovereign Pontiff.[7]

[1] Zallinger, ap. Soglia, vol. i., p. 295.
[2] Notes on the Second Pl. C. Balt., p. 77. [3] Craiss., n. 327. [4] Ib., n. 328.
[5] Ib., n. 329. [6] Soglia, vol. ii., p. [7] Cfr. Tarquini, p. 94.

243.—III. The "Schola Parisiensis" maintained that *parish priests* are the successors of the seventy-two disciples of our Lord, and receive directly from Christ the power to perform hierarchical[8] functions. This opinion, however, was long ago rejected[9] by the most eminent canonists and theologians. In fact, the seventy-two disciples were not parish priests, nor even simple priests. Parish priests themselves were altogether unknown[10] in the first centuries, and did not come into existence in rural districts before the fourth century, and, in cities where bishops resided, not before the year 1000. Rome and Alexandria, perhaps, form exceptions in this respect.[11]

244.—IV. *Among the bishops themselves* there is, *jure divino*, no gradation or superiority; for Christ[12] constituted all bishops equals. The Pope alone is, jure divino, superior to bishops. Hence, only the Papal and Episcopal offices or dignities are of divine[13] institution; the other offices in the Church, or grades of jurisdiction—*v.g.*, the dignity of patriarchs, metropolitans—are undoubtedly of ecclesiastical[14] appointment.

245. By an ecclesiastical office (*officium ecclesiasticum*—Kirchenamt) we mean the right possessed by a cleric to exercise ecclesiastical jurisdiction within the sphere assigned him by ecclesiastical authority.[15] Ecclesiastical offices, therefore, can be established and distributed only by the ecclesiastical, but not by[16] the secular, authority. We shall see in the following question what persons in the Church are entitled to establish these offices.

246. *Q.* Who can establish ecclesiastical offices in the Church?

[8] Craiss., n. 330.
[9] Soglia, l. c., p. 45.
[10] Craiss., n. 330. Cfr. Soglia, vol. ii., p. 44.
[11] Bouix, De Paroch., pp. 23, 24. Paris, 1867.
[12] Bouix, De Princip., pp. 530, 531.
[13] Soglia, vol. ii., p. 7.
[14] Ib., p. 9.
[15] Phillips, Lehrb., § 71, p. 129.
[16] Ib., p. 130.

A.—I. *Erection of Episcopal Sees.*—In the beginning of the Church, not only St. Peter, but also the other apostles,[17] erected episcopal sees; for all the apostles, without exception, received from our Lord *jurisdictio universalis*[18]—*i.e.*, "*jurisdictio in totam Ecclesiam et in totum orbem.*" This *jurisdictio universalis* included the power to establish bishoprics.[19] But, as Craisson[20] remarks, "Potestas universalis singulis apostolis a Christo tributa, transmissa non fuit ad eorum in episcopatu successores; sed sola potestas Petri, utpote ordinaria, ad ipsius successores seu summos Pontifices, debuit transire."

247. Hence, upon the death[21] of the apostles, no bishoprics could be established save by the consent[22] of the Pope. From this we are not, however, to infer that in the first centuries episcopal sees were always erected by the *immediate* authority of the Holy See; for ecclesiastical discipline on this head suffered change at three different[23] periods. The first period extends from the beginning of Christianity to the sixth century. During this epoch episcopal sees were erected *chiefly* by provincial councils, without the *express* sanction[24] of the Holy See. We say, 1, *chiefly* by provincial councils; for no small number of bishoprics were, even during[25] this time, established by the Popes. We say, 2, *without the express sanction of the Holy See;* because provincial councils, in erecting episcopal sees, were bound to observe the laws enacted or approved by the Roman Pontiffs;[26] this is evident from the fact that when the African bishops, contrary to the laws of the Church on this head, instituted bishops even in small places, they were reproved[27] by Pope St. Leo for so doing. In the Eastern Church bishoprics

[17] Craiss., n. 332.
[18] Bouix, De Episc., tom. i., pp. 45, 46.
[19] Cfr. Soglia, vol. i., pp. 207, 208.
[20] L. c., n. 332.
[21] Devoti, lib. i., tit. 5, sect. 1, n. 5, p. 202.
[22] Craiss., n. 332.
[23] Soglia, l. c., p. 203.
[24] Ib., p. 204.
[25] Ib., p. 205.
[26] Craiss., n. 333.
[27] Ib.

were at first established exclusively by the patriarchs; but after ecclesiastical provinces had been formed, this power was exercised also by metropolitans and provincial councils.[28]

248.—2. The second period reaches from the sixth to the eighth century. During this time metropolitans and provincial councils were no[29] longer free to establish bishoprics without the express[30] consent of the Roman Pontiffs.

249.—3. The third period extends from the eighth century to the present day. During this period the power to establish episcopal sees reverted exclusively, though gradually,[31] to the Sovereign Pontiffs, by whom *alone* it is exercised at the present day—at least, so far as the Latin Church is concerned.[32] We must, therefore, distinguish in this matter the question of *right*[33] from that *of fact*. The right or power to erect bishoprics is and always has been, de jure, vested in the Popes alone; as a matter of fact, however, this power was exercised also by[34] others, although only by the express or tacit permission of the Holy See.

250.—II. *Chapters* can, at present, be established only by the Pope,[35] but not by bishops. This applies not merely to chapters of cathedrals, but also to those of collegiate[36] churches.

251.—III. *Parishes or parochial churches* may undoubtedly be established by bishops, provided certain conditions be observed by them.[37] The nature of these conditions depends upon the manner in which parishes are established. Now, parishes are established chiefly in three ways:[38] 1, *per viam creationis;* 2, *per viam dismembrationis;* 3, *per viam unionis.* We shall briefly treat of each of these modes.

[28] Soglia, l. c., p. 205. [29] Ib. [30] Craiss., n. 334.
[31] Soglia, l. c., pp. 206, 207. [32] Craiss., n. 334.
[33] Soglia, vol. i., p. 203. [34] Cfr. Ib., pp. 209, 210.
[35] Bouix, De Capitulis, pp. 190, 191. Paris, 1862.
[36] Cfr. Phillips, Kirchenr., vol. vii., pp. 285, 286. Ratisbon, 1869.
[37] Craiss., n. 336. [38] Ib.

Art. II.

Erection of Parishes "per viam creationis."

252. The *erection* (*erectio, constitutio*) of benefices in general is thus defined: "Erectio beneficiorum est actus legitimus quo sacrum aliquod officium, vel ministerium in certa Ecclesia vel altari, a clerico obeundum, constituitur cum perpetuo reditu, quem clericus jure suo percipiat tum alimentorum et stipendii causa, tum ad ferenda onera beneficii.[39]

253. New parishes are erected *per viam creationis* when they are formed, not from portions of parishes already in existence, but from people or territory not yet assigned to any parish,[40] as happens usually *in partibus infidelium.*[41] In the United States new parishes (quasi-parishes) are still frequently established in this manner. In Europe, where the Catholic faith has ruled for centuries, and where it can therefore scarcely happen that there should be Catholics not yet aggregated to some parish, the erection of parishes *per viam creationis* can scarcely occur.[42]

254. There can be no doubt that bishops, by virtue of their "*potestas ordinaria*," can create new parishes—that is, constitute priests who shall have the care of souls in their own name (*nomine proprio*) and by virtue of their office (*ex officio*), in such districts and over such people as are not yet aggregated to any other parish.[43]

255. In establishing new parishes, whether "per viam creationis," or "per viam dismembrationis," or "per viam unionis," or otherwise,[44] the bishop is, *de jure communi*, bound to provide, as far as possible, for the suitable maintenance[45] of the pastor. This applies, of course, also to the United

[39] Soglia, vol. ii., p. 153.
[40] Bouix, De Paroch., p. 243.
[41] Craiss., n. 337.
[42] Bouix, l. c., p. 245.
[43] Ib.
[44] Ib.
[45] Craiss., n. 338.

States, as is implied in these words of the Fathers of the Second Plen. C. of Baltimore :[46] " Monemus sacerdotes . . ut . . non detrectent vacare cuilibet missioni . . . si Episcopus judicet *sufficiens ad vitae decentem sustentationem subsidium* illic haberi posse."

256. Our parishes, with the exception of some in California, are but quasi-parishes.[47] All our pastors are removable *ad nutum episcopi*.[48] Regular priests having charge of congregations are removed by their superior *or* by the bishop, and neither is obliged to assign to the other a cause for his action. But if the regular superior removes them he should substitute others with the consent of the bishop.[49]

257. In France [50] and other parts of Europe civil governments[51] have a voice in the formation of parishes. In this country the consent of the civil government is not required for the formation of parishes, so far as purely spiritual effects are concerned. Congregations, however, in the United States, Ireland,[52] and England,[53] can, as a rule, hold property safely only by conforming to the civil law on this head. Thus, congregations in the United States can, as a rule, hold possessions in their capacity of congregations only by becoming incorporated according [54] to law. And as the civil laws relative to corporations are not unfrequently opposed to the laws of the Church (*v.g.*, by vesting the title to the property in lay trustees), bishops with us are at times compelled to hold the entire Church property of the diocese absolutely in their own name—*i.e.*, in fee simple and not merely in trust.

258. *Q.* Can parishes whose pastors are *removable ad*

[46] Conc. Pl. Balt. II., n. 108. [47] Ib. [48] Ib., n. 125. [49] Ib., n. 406.
[50] Craiss., n. 339. [51] Phillips, Kirchenr., vol. vii., p. 287.
[52] Syn. Plen. Episc. Hiberniae, ap. Thurles, 1850, Decret. 22, n. 5 ; ap. Coll. Lac., tom. iii., p. 794 ; cfr. Ib., p. 888 ; Conc. Tuam. III., cap. xvii., n. 3.
[53] Cfr. Conc. Prov. Westmonast. II., a. 1855, Decr. 8, n. 19.
[54] Nixon's Digest, p. 686, edit. 1855 ; cfr. Conc. Pl. Balt. II., n. 200.

nutum be changed by the sole authority of the bishop into parishes whose rectors are *irremovable*, and vice versa?

A.—1. It seems that, "de jure canonico" or "de jure communi," this change can be made by[55] the Holy See only. For it is a rule received among canonists, that only the Holy See, but not bishops, can change the nature of benefices. Hence, benefices (*beneficia manualia*), or parishes (*parochiae manuales*) whose incumbents are *amovibiles*[56] *ad nutum*, cannot be changed into benefices (*beneficia perpetua*) or parishes (*parochiae perpetuae*) whose rectors are *inamovibiles*, or vice versa, except by authority of the Holy See.

259.—2. We say "*de jure canonico*"; for custom, it would seem, may authorize bishops to make this change even without leave from the Holy See. Thus, according to Bouix,[57] the bishops of France, without being empowered to do so by the Holy See, sometimes change parishes whose pastors are removable (*Ecclesiae succursales*) into parishes with irremovable pastors.

260.—3. Whether custom in the United States may enable our bishops to undertake this change, we shall not decide. We feel inclined to think it cannot; for, apart from the law forbidding such change by bishops, all "*causae majores*"—*i.e.*, matters of greater importance—are to be referred to and determined by the Holy See. Now, no one will deny that to make pastors in the United States irremovable, even though it be in the larger cities only, is a change of no ordinary moment, especially as all our pastors are at present *amovibiles ad nutum episcopi*. There can be no doubt, however, that whenever, in the judgment of our bishops, this change becomes opportune, it will be readily permitted by the Holy See.

261. *Q.* Are parishes in the United States to be considered *beneficia* in any sense of the term?

[55] Craiss., n. 340. [56] Cfr. Phillips, Lehrb., § 71, p. 130.
[57] De Paroch., p. 240; cfr. Ib., pp. 234, 236.

A.—1. According to Kenrick, both the, 1, "Munera quae in pluribus statibus clericis (sacerdotibus) committuntur cum agrorum fructibus, qui presbyteriis[58] adnectuntur"; and the, 2, "Pensio (salary)[59] quae presbyteris ab aedituis (trustees) solvitur," are to be considered beneficiorum instar.

2. Now, according to the common opinion of canonists,[60] only those benefices are to be accounted *beneficia* in the strict sense of the word which are conferred upon an ecclesiastic *for life*[61] (*beneficia perpetua, titularia, titulata*).[62] Parishes, therefore, with us, cannot be considered *beneficia*, properly speaking. We see no reason, however, why they cannot be named *beneficia manualia*, or benefices in the broad sense of the term; for, according to Reiffenstuel,[63] "Beneficia manualia sunt, quae non conferuntur alicui in perpetuum (*i.e.*, for life), sed ad nutum conferentis, ita ut beneficiarius pro libitu ipsius amoveri possit."

This, we suppose, is the sense in which Kenrick uses the phrase *beneficiorum instar* in the above citation. Konings,[64] however, seems to understand Kenrick as speaking of benefices in the strict sense of the word. Even though Kenrick be correct, it does not follow that our pastors can be licitly, or always even validly, removed without cause.

Art. III.

Erection of Parishes per viam dismembrationis—Division of Parishes.

262. *Definition.*—Parishes are erected *per viam dismembrationis* or *divisionis*, when certain portions are taken away from one or several old parishes in order to form new ones; or simply when old parishes are divided in order to form new

[58] Tract. 10, n. 36. [59] Ib., n. 37. [60] Leuren. For. Benef., q. 4, pars. 1.
[61] Cfr. Phillips, Lehrb., § 71, p. 130.
[62] Cfr. Ferraris, V. Beneficium, art. i., n. 36.
[63] Lib. iii., tit. v., n. 43, 44. Cfr., Ib., n. 52. [64] Mor, n. 630.

ones.[65] It is, generally speaking,[66] forbidden to divide benefices or parishes.[67] We say "*generally speaking*," for bishops may, under certain conditions, divide parishes, even against the will of the respective pastors.[68]

263. Now, what are these conditions? First of all, a *causa justa* and *rationibilis* is required.[69] But what is to be considered a just cause for the division of a parish? The Council of Trent[70] thus answers: "As regards those churches to which, on account of the distance or the difficulties of the locality, the parishioners cannot, without great inconvenience, repair to receive the sacraments and to hear the divine offices, the bishops may, even against the will of the rectors, establish new parishes." Parishes, therefore, may be divided for two reasons: 1, when the parishioners live so far[71] from the church as to be unable, without great inconvenience, to repair to it, in order to assist at Mass and receive the sacraments; 2, when parishioners, though living[72] near the church, cannot, without great difficulty, go to it by reason of the difficulties of the locality, *v.g.*, because rivers, railroad-crossings, and the like intervene between a certain number of the parishioners[73] and the church. Now, either of these causes is of itself a sufficient reason for the division[74] of a parish and the formation of a new one. Observe, however, that the distance or the obstructions of the locality must be such as to make it very difficult for parishioners to reach the church; in a word, they must be such as to cause a *magnum incommodum*.[75] No precise rule, however,[76] can be laid down as to what distance or difficulty of

[65] Craiss., n. 337. [66] Reiff., lib. iii., tit. xii., n. 22, 23.
[67] Cfr. Phillips, Kirchenr., vol. vii., p. 300. [68] Craiss., n. 341.
[69] Reiff., l. c., n. 23 and 26. [70] Sess. 21, c. iv., d. Ref.
[71] Phillips, Kirchenr., vol. vii., p. 302. [72] Bouix, De Paroch., p. 254.
[73] Cfr. Ib., p. 259. [74] Ib. [75] Bouix, De Paroch., pp. 250 and 258.
[76] Ferraris, V. Dismembratio, Novae additiones ex aliena manu., n. 12.

access to the church is required. The bishop is the[77] competent judge. A distance of two miles, or, according to some, of one mile and a half, is deemed sufficient; even a smaller distance may suffice.[78]

264. It is not lawful to divide a parish merely because of the great number of parishioners; for in this case the pastor can only be compelled by the bishop to take as many assistant priests as shall be needed to supply the wants of the parish.[79]

265. Besides a *causa justa*, several other conditions (*formalitates, solemnitates*) are required for the erection of a new parish *per viam dismembrationis*, or for the division of a parish. They are chiefly: 1. The bishop[80] should formally ascertain whether there exists actually a *causa justa;* it is sufficient for him to go to and inspect the place. 2. Ten families[81] at least are required for the formation of a new parish. 3. The rector, the members of the parish to be divided, and others who may be interested, are to be summoned, in order that they may explain their reasons, if they have any, for being opposed to the division.[82] Yet the bishop may, even against the will of the rector, divide the parish. 4. The bishop must fix the limits of the new parish, either by[83] assigning it a certain district or at least certain families. 5. The consent of the chapter is essential, whether the bishop proceeds in[84] virtue of his *jurisdictio ordinaria* or as *delegatus sedis apostolicae*, except when he acts as *delegatus ap. sedis* in regard to exempted parishes. Custom, however, legitimately prescribed, may dispense with this condition.[85] 6. A competent endowment or means of support for the pas-

[77] Ferraris, V. Dismembratio, Novae Additiones ex aliena manu., n. 13.
[78] Bouix, l. c., pp. 264, 265.
[79] Craiss., n. 344; cfr. Conc. Trid., sess. xxi., c. iv., d. R.
[80] Leuren., Forum Benef., part i., quaest. 157, n. 2.
[81] Ferraris, V. Parochia, n. 13. [82] Bouix, l. c., p. 267. [83] Ib., pp. 269, 270.
[84] Ib. p. 270. [85] Craiss., n. 351.

tor must be assigned the new parish, either out of the revenues of the mother church or otherwise." If the mother church furnishes the endowment, its rector obtains the jus patronatus or right of presenting the pastor[87] of the new parish; but, if the latter be not so endowed, it becomes altogether independent of the mother church.

266. *Q.* Are bishops in the United States, when they form new parishes by dividing old ones, bound to observe the above conditions?

A. Strictly speaking, they are not; for, with us, there are as yet no canonically-established parishes. We say, *strictly speaking;* for no one can doubt that it were praiseworthy to observe those conditions, as far as practicable.

267. *Q.* Is it lawful for a bishop to divide a parish, not in order to form a new one, but merely to unite part of the old one to another parish already in existence?

A. We premise: a distinction is to be made between division of territory or district and division of parochial revenues.[86] 1. The bishop may, in certain cases, transfer part of the income of one parish to another already in existence; but it is commonly held by canonists that he cannot, without permission from the Holy See, change the limits of parishes, except for[89] the purpose of forming new parishes. 2. This holds true of canonically established parishes only; bishops, therefore, in the United States may, without permission from Rome, change the limits of parishes in the case under consideration. Thus, the First Pl. C. of Baltimore[90] says: "Valde expedit districtus ecclesiasticos intra certos limites designare; hos tamen districtus, secundum rerum adjuncta, episcopi *mutare possunt.*"

268. Bishops may divide parishes either in their capacity

[86] Conc. Trid., sess. xxi., c. iv., d. R.
[87] Phillips, Kirchenr., vol. vii., p. 303.
[88] Craiss., n. 356.
[89] Bouix, l. c., p. 265.
[90] N. 10, ap. Coll. Lac., p. 146, tom. iii.

of *ordinaries* or also as *delegati sedis apostolicae.*[91] It is always lawful to appeal to the Holy See against the action of the bishop ordering a parish to be divided; so, also, is it allowed to appeal to the metropolitan, except when the parish to be divided is exempted, in[92] which case an appeal lies to the Holy See only. The appeal in all cases has but *effectum devolutivum*, not *suspensivum—i.e.*, the appeal does not stay or suspend the execution of the bishop's decree, which therefore remains in force, except it be annulled by the superior.[93]

Art. IV.

The Erection of Parishes per viam Unionis.

269. The *unio beneficii* takes place "cum duae ecclesiae vel beneficia, superioris auctoritate, ex justa causa inter se conjunguntur."[94] A parish, therefore, is established per viam unionis when several parishes[95] are united into one so as to form, under a certain aspect, a new parish.[96]

270. Now, parishes or benefices are united chiefly in three ways: *per aequalitatem*, *per subjectionem*, and *per confusionem.*

1. The *unio per aequalitatem* or *unio acque principalis*[97] takes place "quando duae ecclesiae ita conjunguntur, ut neutra alteri subjiciatur, sed incolumes cuique serventur proprius titulus, proprii fines ad reditus, ita tamen ut semper conjunctim uni et eidem personae conferendae sint."[98] This union effects no change whatever in the status of the parishes[99] thus united, save that they are governed by one

[91] Cfr. Conc. Trid., sess. xxi., c. iv., d. R.
[92] Bouix, De Paroch., pp. 280, 282.
[93] Ib., p. 283.
[94] Soglia, vol. ii., p. 156.
[95] Bouix, l. c., p. 244.
[96] Cfr. Craiss., n. 337.
[97] Cfr. Phillips, Kirchenr., vol. vii., pp. 320, 321.
[98] Soglia, l. c., p. 157.
[99] Ferraris, V. Unio Benef., n. 1, seq.

and the same pastor.[100] It may, in a certain sense, be said that, in the United States, churches or congregations are not unfrequently united in this manner; for there are many instances where two or three congregations, though administered by one and the same pastor, are, nevertheless, in everything else independent one of the other; hence, too, the accounts of each of these parishes are kept separate by the pastor.

271.—2. The "*unio per subjectionem*" (also *unio accessoria, unio plenaria*[101]) is effected "quum una ecclesia alteri ecclesiae conjungitur, eique tanquam accessorium principali subjicitur."[102] Churches thus united lose their name or title, and their revenues are transferred to the church to which they are annexed.[103] Small out-missions in the United States, where churches are built, may in a measure be said to be thus united to the principal church where the pastor resides.

272.—3. The *unio per confusionem* (*unio translativa, unio extinctiva*[104]) occurs "quum suppressis titulis duarum aut plurium ecclesiarum, nova inde ecclesia creatur, ut si ex duabus ecclesiis parochialibus, quorum reditus valde tenues sint, una tertia ecclesia parochialis, eaque novo titulo erigatur."[105]

273. These three kinds of unions can be made use of only when parishes are united to other parishes or benefices with the care of souls, but not when parishes are to be united with an ecclesiastical corporation, *v.g.*, a chapter, monastery, college, and the like; unions in the latter case are made differently.[106]

274. *Q.* Who has power to unite benefices and churches?

A.—1. Only the Pope can unite bishoprics. He can,

[100] Phillips, Lehrb., p. 140. [101] Cfr. Phillips, Kirchenr., vol. vii., p. 322.
[102] Soglia, l. c., p. 157. [103] Ib. [104] Cfr. Phillips, l. c., p. 323.
[105] Soglia, l. c. [106] Soglia, l. c., p. 158; cfr. Phill., Lehrb., p. 141.

moreover, unite all[107] other kinds of benefices. 2. The bishop can, for legitimate causes, unite benefices and churches in his diocese. An archbishop, however,[108] cannot unite benefices in the dioceses of his suffragans. 3. The chapter, *sede*[109] *vacante*, and hence the capitular vicar (with us, the administrator), can unite those benefices and churches which the bishop can unite. 4. The vicar-general, however, has[110] no power to unite benefices, save when specially commissioned to that effect by the bishop.

275. *Q.* What conditions are required in order that parishes may be lawfully consolidated or united by the bishop?

A. According to the common opinion of canonists, three conditions are essential: 1, a just cause, *v.g.*, if the parishes are too poor to support separate[111] pastors; 2, citation or summoning of all the parties interested, as explained in the case of the division of parishes; 3, the consent[112] of the cathedral chapter; the consent of the people or faithful of the parishes to be united is not required.[113]

276. *Q.* Has the power of uniting parishes and benefices, vested in bishops by the *jus commune*, been restricted by the Council of Trent?

A. We said above that bishops, by virtue of the *jus com.*, have power to unite parishes and benefices situate in their dioceses; they can, moreover, according to the Council of Trent, make these unions not only in their capacity of *ordinaries*, but also as *delegati S. Sedis*, and even though the parishes to be united are reserved to the Holy See.[114] This power of bishops to unite parishes is, however, not without restrictions.[115] Thus,

[107] Reiff., lib. iii., tit. 12, n. 53. [108] Craiss., n. 360. [109] Ib.
[110] Ferraris, V. Unio Benef., n. 13. [111] Soglia, vol. ii., p. 159.
[112] Bouix, De Paroch., p. 285. [113] Reiff., l. c., n. 76.
[114] Bouix, De Paroch., pp. 286, 287.
[115] Cfr. Phillips, Kirchenr., vol. vii., p. 325, seq.

277.—1. A bishop can unite parishes only with other parishes, but not[116] with monasteries, abbeys, hospitals,[117] colleges, and the like.

278.—2. A parish in one diocese cannot be united by the bishop to a parish in another diocese, lest the same parish should become subject to two different bishops.[118] In the United States it sometimes happens—*v.g.*, near the confines of two dioceses—that a church or congregation in one diocese is attended by a priest of another diocese living near the confines or boundaries of the two dioceses, and having "*faculties*" from each of the respective bishops. This union of congregations belonging to two different dioceses is not, strictly speaking, unlawful in this country, because our parishes are missions rather than canonical parishes or benefices, to which alone the above Tridentine restriction applies. We say, *strictly speaking;* because these unions, unless necessary, seem to be opposed to the *spirit* of the Tridentine decree.

279.—3. Again, bishops can unite parishes only permanently, but not temporarily, *v.g.*, for the lifetime[119] of the incumbent. To understand this better, we must remember that the union of parishes is of two kinds: one is permanent (*unio perpetua*), the other is but temporary (*unio temporalis*). A union is permanent "quando exprimitur ut perpetuo duret"; that union is temporary, on the other hand, "quae fit ad tempus, *v.g.*, ad vitam ejus cui conceditur."[120]

280. We said above that bishops can make *uniones perpetuas* only. From this it must not be inferred, however, that when parishes are once united by bishops they cannot again be disunited by them. For, though the unio of parishes, as made by a bishop, should be *unio perpetua*, it need not on that account be "*unio indissolubilis.*"

[116] Reiff., lib. iii., tit. 12, n. 61.

[117] Soglia, vol. ii., p. 160; cfr. Conc. Trid., sess. xxiv., c. xiii., d. R.

[118] Ib.; cfr. Conc. Trid., sess. xiv., c. ix., d. R. [119] Reiff., l. c., n. 58.

[120] Ib., n. 38, 37.

281. This brings us to the *disjunctio*[121] *beneficii* or *parochialis ecclesiae.* Parishes which have been united may again, under certain conditions, be disunited by the bishop, and thus reinstated in their former condition.[122] This severance or dissolution of the unio is named "*disjunctio beneficii.*"

282. *Q.* We ask, 1, for what causes; 2, in what manner or under what conditions; 3, by whom, is the *disjunctio* made?

A.—1. *Causes:* Parishes that have been united may be disunited when the causes for which they were consolidated have ceased to exist, *v.g.*, if the number of parishioners has grown larger, or if the revenues of the parish have increased, and the like.[123]

2. *Conditions:* The formalities or conditions to be observed in the *disjunctio* are the same as those required for the *unio*—namely, 1, verification of the cause; 2, summoning of all persons interested in the *disjunctio;* 3, consent of the chapter.[124]

3. The *disjunctio* is to be made by authority of the bishop. Bishops can disunite parishes—*i.e.*, dissolve unions of parishes—not only when made by themselves, but also when made by their predecessors, or even by the Holy See.[125]

[121] Soglia, vol. ii., p. 162. [122] Ib. [123] Ib. [124] Ib. [125] Ib.

CHAPTER VII.

ON APPOINTMENTS TO ECCLESIASTICAL OFFICES OR BENEFICES (DE INSTITUTIONE CANONICA).

ART. I.

Of Appointments in General (de institutione canonica in genere).

283. By the conferring of an ecclesiastical office (*institutio, concessio, collatio, provisio, donatio*) we here mean the appointment to a vacant ecclesiastical office of whatsoever kind,[1] made in a lawful manner, by authority of the proper ecclesiastical[2] superior. The word "*institutio*" is, *in sensu lato*, usually applied to any canonical appointment whatever;[3] *in sensu stricto*, only to appointments where the person to be appointed is designated by the *patronus*[4]—*i.e.*, the person vested with the *jus patronatus*—and where, consequently, the ecclesiastical superior confers the office, but does not designate the person[5] upon whom it is to be conferred.

284. That a person, in order to hold or fill an ecclesiastical office, must be properly or canonically appointed to it, is proved from the Sacred Scriptures,[6] the Council of Trent,[7] and canon law.[8]

285. The conferring of or appointment to an ecclesiastical office, being an act by which ecclesiastical rights and

[1] Craiss., n. 370.
[2] Phillips, Lehrb., § 77, p. 142.
[3] Craiss., n. 370.
[4] Ib.; cfr. Devoti, lib. i., tit. v., lect. iv., § 47.
[5] Phillips, l. c., p. 144.
[6] Jo. x. 1, Epist. ad Hebr. v. 4.
[7] Sess. xxiii., can. 7.
[8] Cfr. Craiss., n. 371.

offices are bestowed, and being therefore an exercise of spiritual authority, can[9] be made only by ecclesiastical superiors—*i.e.*, the prelates of the Church—not by lay persons. Kings, it is true, have sometimes been empowered by Popes to confer ecclesiastical benefices; but this was only by[10] special privilege. Lay persons cannot, as such, confer ecclesiastical offices.

286. From this it follows: 1. Investitures in the Middle Ages were deservedly condemned[11] by Popes Gregory VII. and Callistus II. 2. In like manner, Pope Innocent XI. was very justly indignant at the concession made by the French bishops in 1681, by which the King of France was to be allowed[12] to confer all those benefices of his kingdom to which no jurisdiction was attached. 3. All those persons are to be looked upon as intruders who, being rejected,[13] even though unjustly, by the proper ecclesiastical superior, have recourse to the secular power to obtain, or rather invade, ecclesiastical offices.

287. *Q.* Can one who is elected, presented, or nominated to a prelacy or bishopric enter upon its administration under some title or other before he has obtained and properly made known the bulls of confirmation from the Holy See?

A.—1. *De jure communi*, persons who are, in the proper sense of the term, elected to episcopal sees[14] can neither lawfully nor validly engage in the administration of such sees before they have obtained and exhibited their letters of confirmation.[15] This is proved: 1. From the decretal *Avaritiae*, 5 *De Electione*, *in* 6, issued by the Œcumenical Council of Lyons, held under Gregory X. in 1273, which says: "Sancimus ut nullus administrationem dignitatis ad quam electus est, priusquam electio confirmetur, sub oeconomatus vel procurationis nomine, aut alio de novo quaesito colore

[9] Soglia, vol. ii., p. 166. [10] Ib. [11] Craiss., n. 372. [12] Ib., n. 373.
[13] Ib., n. 375. [14] Cfr. Soglia, vol. ii., pp. 40, 41.
[15] Bouix, De Episcop., vol. i., p. 264. Paris, 1873.

(pretext), in spiritualibus vel temporalibus, per se vel per alium, pro parte vel in totum, gerere vel recipere, aut illis se immiscere praesumat."[16] Those who act contrary to this law forfeit all the rights of their election, and become ineligible to any prelature whatsoever.[17] 2. Again, the decretal "*Injunctae*," *ann.* 1300, *tit. De Electione*, enjoins that persons "*qui apud sedem apostolicam promoventur*," besides receiving their bulls of confirmation, must also show them to the proper parties, and that "nulli eos (electos) absque dictarum litterarum (bulls) ostensione recipiant, aut eis pareant, vel intendant"[18] (cf. C. Ap. Sedis of Pius IX., Susp. I.)

288.—2. The above applies not only to those who are elected bishops by chapters, where these exist, but also to those who are nominated, presented,[19] or proposed to the Holy See by the bishops of the United States. For the decretal "*Injunctae*" speaks not merely of such as are elected, but, in a general manner, of all those qui promoventur apud sedem apostolicam. Now, those priests whom the bishops of the United States propose to the Holy See for vacant bishoprics evidently belong to the class of those *qui apud apostolicam promoventur*, and are consequently included in the above law.[20]

289. Against this conclusion it may be objected that the decretal *Nihil* 44, *De Electione*, issued by Pope Innocent III. in the Lateran Council (ann. 1215),[21] ordains that persons elected[22] may administer the diocese to which they were elected even prior to obtaining the bulls of confirmation, *si sint extra Italiam, atque id deposcat dioecesis necessitas aut utilitas*.[23] Our answer to this objection is: 1. It is a controverted question among canonists whether the decretal *Nihil* was not

[16] Ap. Bouix, De Episc., vol. i., pp. 249, 250.
[17] Reiff., lib. i., tit. vi., n. 40, 41, 42; cfr. Soglia, vol. ii., pp. 40, 64.
[18] Bouix, De Episc., vol. i., p. 265.
[19] See our Notes, p. 93, seq.
[20] Cfr. Bouix, De Episc., vol. i., pp. 268, 269.
[21] Ib., p. 249.
[22] Cfr. Soglia, vol. ii., p. 64.
[23] Ap. Bouix, l. c., p. 271, seq.

entirely revoked by the subsequent decretals [24] *Avaritiae* and *Injunctae*, and whether it is therefore of any force at present. 2. Even though we admit that the decretal *Nihil* is still in force, yet its provisions are applicable to those appointees only who are outside of Italy and are unanimously elected by chapters,[25] but not to those who are nominated or proposed by temporal rulers or presented by bishops in the United States. In any case, therefore, the decretal *Nihil* relates merely to several dioceses of Germany, where alone bishops are still elected by the canons of cathedral chapters.[26]

290. No priest, therefore, in the United States, whom the bishops of the respective provinces have presented to the Holy See for a vacant bishopric, can assume the administration of such diocese before he has received and exhibited—*v.g.*, to the bishop's council or the clergy [27]—the bulls of confirmation. This applies also to those who were administrators of such dioceses before they were presented to them by the bishops of the respective provinces. This is evident from these words of Reiffenstuel:[28] "Porro hactenus dicta procedunt etiam in eo, qui ante electionem extiterat procurator (*i.e.*, with us, administrator) ecclesiae. Nam si contingat oeconomum eligi in praelatum, statim a tempore electionis tenetur ipse abstinere ab administratione oeconomiae." Some authors, however, maintain the contrary, on the plea that the *cap. Avaritiae* speaks merely of those who *attempt to enter* upon the administration, which is not the case with

[24] Ap. Bouix, l. c., p. 266. [25] Ib., pp. 271, 272; cfr. ib., p. 266.

[26] Bouix, l. c., p. 266.

[27] In the United States it is not the custom to show the bulls of appointment to the bishop's council or to the clergy. The bulls are simply sent by the Propaganda to the metropolitan of the province comprising the vacant see, and by him to the bishop elect. Hence, it would seem that, though it may be *advisable*, it is not, at least strictly speaking, *obligatory* with us, for bishops elect to exhibit the bulls to their clergy, especially as there are no chapters in this country.

[28] Lib. i., tit. vi., n. 43; cfr. Craiss., n. 378.

capitular vicars or administrators who had been *already in possession* of the administration of the diocese at the time they were proposed or nominated for that see.[29]

291. With us, the administrator of a diocese, *sede vacante*, is appointed either by the bishop himself, while alive, or, in his default, by the archbishop or senior suffragan, as the case may demand.[30] The appointment, though theoretically but temporary, since it is subject to the action of the Holy See, yet is practically permanent, being but rarely changed or reversed.[31]

292. It may have happened in this country that administrators of dioceses, *sede vacante*, being proposed or nominated by the bishops of the province, yet continued to administer the diocese for which they were nominated, before they received and exhibited their bulls of confirmation from Rome. Is this sanctioned by legitimate custom? We shall not decide. Reiffenstuel[32] holds that a custom which allows persons elected or nominated to administer the diocese before they obtain and show the bulls of confirmation from Rome is but an abuse.

293. Canonists, however, commonly teach that these persons may assume the administration of the diocese even before they receive confirmation from Rome, especially in two cases, 1, when[33] this is done by special consent of the Pope; 2, or by virtue of privilege.[34] Observe, that a bishop elect cannot exercise *any act whatever*[35] of episcopal jurisdiction—*v.g.*, make appointments, etc.—before he has received and exhibited the bulls of his appointment; on the other hand, he can assume the administration in full of his diocese as soon as[36] he has shown the bulls of his appointment (in

[29] Ap. Craisson, n. 378, p. 196, vol. i. Man.
[30] Conc. Plen. Balt. II., n. 96, 97, 98.
[31] Notes on the Second Plen. C. Balt., p. 64, also pp. 61–64.
[32] Lib. i., tit. vi., n. 38. [33] Ib., n. 46. [34] Ib., n. 47.
[35] Ib., n. 36. [36] Craiss., n. 385.

this country, *v.g.*, to the bishop's council), even before he has received consecration or taken possession of his see (*possessionis assumptio, inthronizatio*[37]). He may exhibit the bulls and take possession of his see either personally or by proxy.[38]

294. *Q.* Should appointments for ecclesiastical offices be made in writing?

A. The appointment (*institutio canonica*) is to be made either by the Supreme Pontiff or it is made by bishops. In the first case, it should be[39] executed and given the appointee in writing—*i.e.*, in formal and canonical letters of appointment (*litterae provisionis, litterae confirmationis, litterae institutionis*); in the second case—namely, when persons are appointed by bishops (*v.g.*, to a parish)—it does not appear necessary[40] for the validity of the appointment (*ad valorem institutionis*) that it should be in writing. When we say "*in writing*," we mean not an ordinary, even though official, letter from the bishop to the appointee, but a formal instrument,[41] properly—*i.e.*, canonically—drawn up, signed, sealed, and delivered (*litterae provisionis*). We said above, "for the *validity* of the appointment"; for it seems that, at the present day, appointments by bishops, in order to be *lawful*,[42] should be in writing; this, however, holds, at least strictly speaking, only of appointments to *canonically* established offices or parishes, but not of appointments in the United States, where there are no canonically established parishes. In fact, our bishops make their appointments to parishes and the like either verbally or by ordinary letters, but not by formal instruments.

295. Finally, it is necessary for the exercise both of *jurisdictio ordinaria* and *delegata* that the person appointed should at least implicitly accept the appointment.[43]

[37] Phillips, Lehrb., p. 146.
[38] Craiss., n. 385.
[39] Craiss., n. 382.
[40] Ib., n. 383.
[41] Cfr. Soglia, Jus Privat., t. ii., p. 190.
[42] Ib., p. 189.
[43] Craiss., n. 386.

Art. II.

Of Appointments to Ecclesiastical Offices in Particular—Of Election, Postulation, Presentation, and Collation.

296. In the foregoing paragraph we discoursed on appointments in general; in the present, we shall briefly treat of the various ways in which appointments to offices in the Church are made. Ecclesiastical offices are conferred chiefly in four ways: 1, by election; 2, postulation; 3, presentation; 4, collation.[44] We shall briefly explain each.

§ 1. *Election* (*electio*).

297. By election (*electio*) in a general sense is meant any appointment whatever to ecclesiastical offices, whether it be in the form of postulation, presentation, etc.[45] By election, in a strict sense, we mean a distinctive mode of filling ecclesiastical offices, or of making appointments, which is defined: "Electio est personae idoneae ad vacantem ecclesiam, per eos quibus jus eligendi competit, canonica vocatio, auctoritate superioris confirmanda."[46] At the present day none but the following persons are, properly speaking, elected to offices: the Roman Pontiff, regular prelates, capitular vicars, and bishops in some parts of Germany.[47]

298. Elections may be held in one of these three ways only: 1, *per quasi inspirationem;* 2, *per compromissum;* 3, *per scrutinium.* Let us explain these forms.[48]

299. *First, an election* is held in the form of quasi inspiration (*electio per quasi inspirationem*), when *all* those who are entitled to vote, without even a single[49] exception, and with-

[44] Soglia, vol. ii., p. 165; cfr. Craiss., n. 387.
[45] Reiff., lib. i., tit. vi., n. 3.
[46] Reiff., l. c., n. 4.
[47] Craiss., n. 388.
[48] Cap. Quia propter 42, De Electione, issued by the Fourth Lateran C. in 1214; cfr. Craiss., n. 389.
[49] Phillips, Kirchenr., vol. v., p. 852.

out any special previous arrangement, choose by acclamation, and, so to say, with [50] one heart and mouth, some person to fill an office. We say, "without any previous arrangement" (*nullo praecedente tractatu*); for the electors must, so to say, at the mere mention of the name of the candidate, unanimously proclaim him as their choice for the office; this sort of election, therefore, must be spontaneous, not preconcerted. Any previous arrangement as to the person to be elected, and all influence brought to bear in his favor, are excluded from this mode of election.[51]

300. *Second, an election* takes place in the form of compromise (*electio per compromissum*), "quando capitulares praesentes facultatem eligendi in unum vel plures idoneos viros conferunt, qui vice omnium eligant." [52] The persons thus selected to perform the election (*compromissarii*) need not be [53] members of the chapter; they must, however,[54] be ecclesiastics. The consent of all the vocals or persons entitled to vote is indispensable to an *absolute*, but not to a *limited*, compromise.[55]

301. *Third*, the election by ballot (*electio per scrutinium*) is that "quae praesentibus omnibus, qui debent, volunt, et possunt interesse, fit per collectionem suffragiorum circa eum in quem majoret sanior pars capituli consentit." [56] This form of election, therefore, consists in this, that each of the voters casts his vote separately, either viva voce or secretly—namely, by ballot or ticket.[57] Elections are usually held in this manner [58]—*i.e.*, by ballot.

302. The observance of one or the other of these three forms of election is obligatory only in the election of prelates *pro ecclesiis viduatis*—that is, of bishops [59] and irremov-

[50] Phillips, Kirchenr., vol. v., p. 869. [51] Ib. [52] Reiff., l. c., n. 68.
[53] Ib., n. 69. [54] Ib., n. 70. [55] Ib., n. 71–77. [56] Ib., n. 108.
[57] Phillips, Kirchenr., vol. v., p. 876; cfr. Bouix, De Capit., p. 185; Devoti, lib. i., tit. v., n. 18. [58] Phillips, Lehrb., p. 206.
[59] Reiff., l. c., n. 110.

able abbots;[60] in the election of inferior persons, *v.g.*, of canons, no particular manner of voting is[61] prescribed; all that is necessary is that the canons, when capitularly assembled, cast a majority of votes for the person to be chosen.

303. *Q.* Who are to be invited to take part in the election?

A. All those who have the right of suffrage—namely, all those *qui debent, volunt, et possunt commode interesse.* This holds so strictly that if but one of these persons is not invited he may demand the annulment of the election, though he must do so within[62] six months. We said above that all those are to be invited "*qui debent, volunt, et commode possunt interesse.*" We explain.

304.—1. *Qui debent:* by which are excluded those who by law are deprived of the right of suffrage, such as minors or persons not having the full use of reason,[63] laymen, etc., etc.[64]

305.—2. *Qui volunt:* because no account is to be made of those who do not wish to be present at the election.[65] Hence, in case all who are entitled by law to vote were properly summoned, those who attend, though forming but a small number of the entire body of electors, may yet lawfully perform capitulary acts. In like manner, if, during the election, some electors should leave the place of election and refuse to return, the rest may proceed without them, provided, however, the majority did not go away.[66]

306.—3. *Qui possunt commode interesse:* since those who are at too great a distance need not necessarily be called.[67] *De rigore juris communis,* those only are to be summoned who are within the province.[68] The custom, however, of a place should be observed.[69]

[60] Reiff., l. c., n. 111. [61] Ib., n. 112. [62] Craiss., n. 394.
[63] Ib., n. 395. [64] Ib. [65] Reiffenst., lib. i., tit. vi., n. 117.
[66] Craisson, n. 396. [67] Reiffenst., l. c., n. 118.
[68] Ib., lib. i, tit. vi., n. 118; Craisson, n. 397, 398. [69] Ib., l. c.

307. Voting by proxy is admissible only when the voter is legitimately absent[70] and when this practice is sanctioned by custom or local statute.[71] Again, sick vocals or voters who, though in the city or place where the election is held, are yet unable to assemble in the place of election by reason of infirmity, may cast their vote either by proxy or personally in their residence, when waited upon by those who are deputed to collect the votes.[72] Neither sick nor absent capitulars, however, can send their vote in *writing*, there being an essential difference between the latter and voting by proxy.[73] Some authors, however, assert the contrary.[74] Blank ballots do not count.[75]

308. *Q.* How many electors must be present in order to constitute a valid election?

A. Two-thirds are required of those vocals or electors only *qui debent, volunt, et possunt commode interesse.* Hence, in default or non-appearance of the rest, even three, or two, or one capitular may perform the election, making the nomination before a notary and witnesses.[76]

309. *Q.* How many votes are requisite to a valid election or capitulary act?

A. Ordinarily, it is not essential that all the electors actually present should consent; but the vote of the *majority* of those who are present is sufficient, provided all those who have a right to be present were canonically called or invited.[77] Thus, if thirteen took part in the election, seven will constitute a majority.[78] We say *ordinarily*, for in certain cases a *majority* vote is insufficient. Thus, in the election of Sovereign Pontiff, the suffrage of two-thirds of the

[70] Ceccoperius, lib. iv., tit. iii.; ap. Bouix, De Capit., pp. 181, 182, edit. 1862. [71] Monacelli, ap. Bouix, De Capit., p. 182. [72] Reiffenst., l. c., n. 192.
[73] Ib., n. 194; cfr. Bouix, De Cap., p. 182. [74] Ap. Reiffenst., l. c., n. 196.
[75] Reiffenst., l. c., n. 203. [76] Ceccoperius, ap. Bouix, De Capit., p. 166.
[77] Bouix, De Capit., pp. 169, 168; cfr. Reiffenst., lib. i., tit. vi., n. 145.
[78] Reiffenst., l. c., n. 189.

cardinals present at the election is indispensable.[79] Other exceptions may be seen in Bouix.[80]

310. According to canon law, the vote not only of the *pars major*, but also that of the *pars sanior*, is requisite. It is commonly, however, held that the majority, or the pars major, is also the pars sanior, unless the contrary be proven.[81]

311. *Q.* What else is prescribed relative to elections?

A.—1. The election should take place within three months from the day of the vacancy. 2. It must be free. 3. No simony should intervene. 4. The votes, as cast, should be absolute and determinate, not[82] uncertain or conditioned. 5. Once the result is published—*i.e.*, the vote announced (*publicato scrutinio*)—the[83] voters cannot, as a rule, change their vote (*non possunt electores amplius variare*). We say, "*as a rule*"; for there are several exceptions.[84] Among others, a peculiar exception is made in favor of the elections of nuns: when, namely, one of their number is elected, *v.g.*, abbess, by a majority, but not by a two-thirds vote,[85] the nuns composing the minority may go over (*accessus*) to the majority, and thus change their vote, even[86] after the publication of the votes. 6. It is not generally prescribed, though it is advisable, that the votes[87] should be cast *secretly*. We say, "*generally*"; for, in the election of superiors of regulars, and of superioresses[88] of nuns, nay, in the election of all officials whatever of religious of both sexes, the voting must be *secret*, otherwise the election is null, even though but one of the voters should, with the permission of the chapter,[89] make known his vote, *v.g.*, by attempting to vote viva voce, or by telling his vote to another capitular.

[79] Bouix, De Cap., p. 170.
[80] L. c., p. 170.
[81] Reiffenst., l. c., n. 143; cfr. Craisson, n. 404.
[82] Craiss., n. 406.
[83] Cap. Publicato 58, De Elect.
[84] Reiff., lib. i., tit. vi., n. 290–300.
[85] C. Indemnitatibus 43, § Sane, De Elect. in 6.
[86] Reiff., l. c., n. 300.
[87] Craiss., n. 409.
[88] Reiff., l. c., n. 328–351.
[89] Ib., n. 345.

The Council of Trent enacted this law in order that no enmities might be occasioned[90] among the religious by elections. Hence, the religious are bound to preserve secrecy as to their vote, even after the election, though a violation of this secrecy, at that time, does not[91] annul the election. 7. Elections cannot take place by lot (*per sortem*), except, perhaps, when the votes are equally divided between two[92] candidates, after the second or third ballot.

312. *Q.* What are the chief things to be done after the election?

A.—1. When the election is over, a decree is drawn up and signed by the voters; then all power to change the vote is cut off. 2. The person elected should be notified of his election within eight days, and his consent must be given within[93] a month. 3. A bishop elect must receive consecration within three months from the day on which he was notified of his confirmation. No religious can consent to his election for a prelature out of the monastery without permission from his superior; otherwise the election is, ipso facto, null and void.[94]

§ 2. *Postulation* (*postulatio*).

313. Chapters who may still have the right (*v.g.*, in some parts of Germany) to elect bishops, may sometimes wish to choose a person as bishop who, though otherwise competent, is nevertheless ineligible by reason of some canonical impediment, *v.g.*, for want of the requisite age,[95] or if he is already a bishop. In this case the canons cannot, strictly speaking, elect such person, but merely request (*postulatio solemnis*, *petitio*, *supplicatio*) the Holy See that he be appointed. This petition (*postulatio solemnis*) must be addressed to the Holy See in a canonical manner. Hence, 1, a majority of the chapter should, generally by vote (*per*

[90] Reiff., l. c., n. 343. [91] Craiss., n. 409. [92] Ib., n. 410. [93] Ib., n. 411.
[94] Craiss., n. 413. [95] Soglia, vol. ii., p. 65.

scrutinium), concur in[96] the request; 2, only the electors—*i.e.*, those who have the right of suffrage[97]—can vote for the petition to be addressed to the Holy See; 3, the petition must state the impediments[98] affecting the person whose appointment is requested; 4, the impediments themselves must be dispensable.[99] Once the canons have signed the petition and presented it to the Holy See, they are no longer free[100] to change the request or postulation. This kind of postulation (postulatio solemnis) seems to have gone out of use; for, as Devoti[101] says, "hodie generatim omnes, quibus vel aetas, vel quidvis aliud impedimento est, quominus eligi possint, a sede apostolica veniam, sive indultum eligibilitatis impetrare solent."

314. Ecclesiastics of one church or diocese may be elected to some dignity in another church or diocese, with the permission, however, of their superiors (*postulatio simplex*).[102]

§ 3. *Presentation, Nomination* (*praesentatio, nominatio*).

315.—I. Presentation (*praesentatio, institutio*) is defined: "Personae ad Episcopum vel alium cui competit institutio, per patronum legitime facta exhibitio, ut ei de beneficio vacante provideat."[103] Here the presentation must be distinguished from the appointment. The person whom the *patronus* wishes to have appointed can only be designated or presented by him; the appointment (*collatio non libera, institutio*) itself belongs to the bishop, though it cannot be withheld[104] except for canonical reasons. No *jus patronatus* or right of presentation exists in the United States.

316.—II. Nomination (*nominatio solemnis*) is that "per quam duo vel plures excellentiores nominantur seu pro-

[96] Ferraris, V. Postulatio, n. 27. [97] Ib., n. 6. [98] Ib., l. c., n. 9.
[99] Ib., n. 8. [100] Ib., n. 17.
[101] Lib. i., tit. v., n. 27.
[102] Ferraris, l. c., n. 16.
[103] Reiff., lib. i., tit. vi., n. 18.
[104] Our Notes, p. 121.

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ponuntur superiori, ad hoc ut unum ex illis admittat, eique de beneficio providere dignetur." [105] When a bishopric falls vacant in the United States, three candidates are usually proposed to the Holy See by the bishops of the province. This presentation seems to partake somewhat of the character of nomination.[106]

§ 4. *Collation or Appointment Proper* (*collatio*).

317. Thus far we have used the word appointment (*concessio, collatio*) in a general sense, and applied it to *every* form or mode of conferring ecclesiastical offices. We shall now examine what is meant by the power of appointment "in sensu stricto."

318. An appointment (*collatio*) proper differs from an election (*electio*) chiefly in these two ways: 1. The appointment confers upon the [107] appointee the office itself (*jus in re*); an election gives but a claim to the office (*jus ad rem*). A person, by being elected, is not thereby appointed, but merely receives the right to be appointed to an office. An election, therefore, may be termed an inchoate and imperfect appointment. The same difference exists between appointments and presentations or nominations. 2. Again, an appointment proper is made by *one* person only; while an election consists essentially of the votes of a *number* of persons.[108]

319. From the above it will be seen that, by an appointment, the full title to the office is vested in the person appointed, who, in fact, becomes, so to say, the owner of the office.[109]

320. Now, an appointment is termed collatio libera when the collator or appointer not only has the right to appoint

[105] Reiff., l. c., n. 10. [106] Cfr. Craiss., n. 416.
[107] Reiff., lib. i., tit. vi., n. 25; cfr. Phillips, vol. vii., p. 489, seq.
[108] Devoti, lib. i., tit. v., sect. iii., n. 28. [109] Cfr. Soglia, tom. ii., p. 165.

but also to designate [110] or nominate the person he wishes to appoint; this appointment is named *collatio libera* because the appointer is at liberty to appoint [111] any person he chooses. On the other hand, an appointment is called *collatio non libera, necessaria*, when the appointment itself belongs [112] to one person, and the designation or nomination of the party to be appointed to another. The appointment in this case is termed *collatio necessaria, non libera*, because the appointer cannot refuse to appoint the person designated or presented to him for appointment unless canonical obstacles forbid the appointment.

321. We shall subjoin a few words relative to the mode of appointment of bishops at the present day. It is certain that the appointment—that is, not only the confirmation, but also the election of bishops—is now reserved exclusively [113] to the Roman Pontiff, save in some parts of Germany, where, by virtue of concordats, bishops are still elected by chapters.[114]

322. The manner in which the Holy See now appoints bishops is this:

1. The appointment is made by the Pope, as a rule, in ordinary [115] or secret consistory. We say, *as a rule;* for the bishops of the United States, and of missionary countries in general, are not appointed in consistory.[116]

323.—2. The appointment itself is preceded by an investigation (*processus informationis, processus inquisitionis*), which is instituted in order to ascertain whether the person to [117] be appointed possesses the necessary qualifications. When the candidate lives in Italy this [118] process of investi-

[110] Reiff., l. c., n. 24.
[111] Phillips, Lehrb., p. 142, § 77.
[112] Ib., § 78, p. 144; cfr. ib., Kirchenr., vol. vii., p. 485.
[113] Bouix, De Episc., vol. i., pp. 205, 206.
[114] Ferraris, V. Episcopus, art. ii., n. 15.
[115] Phillips, vol. vi., § 321, pp. 579, 580.
[116] Ib., § 321, p. 579, and § 330, p. 670; cfr. Bouix, De Episc, vol. i., p. 232.
[117] Phillips, Lehrb., § 154, p. 303.
[118] Soglia, vol. ii., p. 68, § 39.

gation is conducted in Rome; if he resides out of Italy, it is made either by the apostolic nuncio or some other bishop specially commissioned[119] by the Roman Pontiff to that effect. The result of this investigation is then sent to Rome and submitted to a committee of cardinals (congregatio consistorialis). This committee then examines (*processus definitivus*) the report submitted to it, and then decides whether the Pontifical confirmation is to be[120] given or refused.

324.—3. The confirmation, as given by the Pope in consistory, is couched in these words: "Auctoritate Dei omnipotentis, Patris et Filii et Spiritus Sancti, et Beatissimorum Apostolorum Petri et Pauli, ac Nostra, Ecclesiam W. . . . de persona W. . . . providemus ipsumque illi in episcopum praeficimus et pastorem; curam et administrationem ipsius, eidem in spiritualibus et temporalibus plenarie committendo."[121]

325. In the United States the bishops, either in provincial council or special meeting, discuss the qualifications (*processus informationis*) of those whom they wish to propose to the Holy See for vacant bishoprics:[122] a statement or report of the acts of the meeting is sent to the[123] Propaganda. The bishops of the United States, and of missionary countries in general, are appointed by the Pope mainly on the recommendation or nomination of the Propaganda.[124]

326.—4. After the promotion, in consistory or otherwise, bulls are sent to the bishop elect, to the consecrator, metropolitan, clergy, and people of the[125] appointee.[126] The bishop elect is obliged to make the profession of faith (*β*) and to take the oath of obedience and fidelity to the Roman Pontiff; if

[119] Cfr. Bouix, De Episc., vol. i., p. 215. [120] Phillips, l. c.
[121] Ap. Craiss., n. 420. [122] Conc. Pl. Balt. II., n. 106.
[123] Cfr. our Notes, pp. 95, 99. [124] Phillips, l. c. [125] Craiss., n. 420.
[126] The Propaganda, in appointing bishops for the United States, sends bulls, not to the clergy or people, but merely to the bishop elect, and that through the metropolitan.

out of Rome, he must take this oath in the hands of the consecrator.[127]

327. In regard to this whole matter, Bouix[128] very properly remarks that modern canonists need no longer weary themselves with the study of complex and involved questions as to the election and postulation of bishops, for the simple reason that the Holy See has almost everywhere deprived cathedral chapters and all other parties of the right to elect bishops.

Art. III.

On the Manner of Electing the Sovereign Pontiff.

328. We ask: What persons have, at various times, exercised the power to elect the Sovereign Pontiff? We reply: 1. At first—*i.e.*, from the time of St. Peter to Pope St. Sylvester I.—the right to elect the Roman Pontiff was vested in the Senate of[129] the Church of the city of Rome. This Senate, which was instituted by St. Peter himself, was composed of twenty-four priests and deacons. 2. After the pontificate of St. Sylvester I. († 335), the entire Roman clergy and people were[130] also admitted to the election of the Pontiff. 3. From the time of Pope Simplicius (ann. 467) to that of Zachary (ann. 741) temporal rulers sought to establish the custom that no Pontiff should be acknowledged as such[131] without their confirmation. 4. Pope Nicholas II. was the first who gave the chief voice in the election of the Roman Pontiff to the cardinals, by ordaining that the election should be held[132] by the cardinal bishops. 5. Finally, Pope Alexander III. (ann. 1178) reserved the right of electing the Pontiff exclusively to the cardinals; he also[133] enacted that the Pope could be validly elected by two-thirds of all the cardinals present without any[134] regard

[127] Craiss., n. 421. [128] De Episc., vol. i., pp. 207, 208.
[129] Ferraris, V. Papa, art. i., n. 13. [130] Ib., n. 14. [131] Craiss., n. 422.
[132] Ferraris, l. c., n. 20, 36. [133] Ib., n. 21, 24, 36. [134] Craiss., n. 423

to the absent members of the Sacred College. These enactments were confirmed [135] by Gregory X. (1274) and Clement V. (1310), and are in force at the present day.

329. *Q.* Can the Pope elect his successor?

A. The Pope is prohibited from electing his successor, not only by ecclesiastical but also by divine and natural law; and such election would be null and void.[136] Hence, the Sovereign Pontiff could not, even with the consent of the cardinals, validly issue a constitution authorizing a Pope to elect or appoint his successor.[137]

330. *Q.* What should precede the election of the Roman Pontiff?

A.—1. Immediately upon the death of a Pope the cardinals are to be convoked; [138] all must be summoned, even those who are absent, excommunicated, suspended, or interdicted; also cardinals but recently created, though not yet invested with the insignia of the cardinalate. 2. The cardinals present must *ordinarily* [139] wait ten days for the arrival of those who are absent. If, however, the cardinals present, for just reasons, proceeded to elect the Pope before the lapse of ten days from the day of the death of the late Pontiff, this election would nevertheless be valid.[140] 3. On the tenth day, or, according to Phillips,[141] on the eleventh, the cardinals enter the conclave in procession. None of the cardinals then in Rome can, except in case of sickness, refuse [142] to enter the conclave; those who arrive later must also be admitted.[143] Once assembled in conclave, they are not at liberty to leave it before the election [144] is over; those who are compelled to go, by reason of sickness or other just cause, do not lose the right [145] to return, as Craisson [146] erroneously asserts.

[135] Ferraris, l. c., n. 22, 36. [136] Ib., V. Papa, art. i., n. 1, 2.
[137] Ib., l. c., n. 12. [138] Craisson, n. 424. [139] Ib., l. c., n. 424.
[140] Ferraris, V. Papa, art. i., n. 24. [141] Lehrb., pp. 205, 206.
[142] Ib., p. 206. [143] Ib. [144] Phillips, Kirchenr., vol. v p. 860.
[145] Ib., p. 862. [146] N. 424.

4. If, in the course of the election, a considerable number of cardinals should withdraw from the conclave, refusing to participate in the election, the right of electing the Pontiff would devolve on the remaining cardinals, even though but two;[147] nay, even in case but one were left.[148]

331. *Q.* What is the present mode of electing the Sovereign Pontiff?

A.—1. The election must be held[149] at present either *per scrutinium*, or *per compromissum*, or *per quasi-inspirationem*.[150] Though any of these three modes can be made use of, the *scrutinium* is the one more usually adopted.[151]

332.—2. The *election per formam scrutini* consists in this that each of the voters casts his vote, as a rule, by ballot;[152] in the election of the Sovereign Pontiff, the cardinals are obliged to vote by secret[153] ballot. The candidate who receives the votes of two-thirds of all the cardinals present in the conclave[154] is canonically elected Pope. Before the balloting, three cardinals (*scrutatores*) are chosen by lot to count the votes and announce the result.[155]

333.—3. The votes are cast in this manner: Each cardinal writes the name of his candidate on the ballot or ticket of election, formulating[156] his vote thus: "Eligo in summum Pontificem Reverendissimum Dominum meum Dominum Cardinalem N. . . ." This ticket is then folded (*complicatio schedularum*), sealed (*obsignatio schedularum*), and deposited by[157] the voter in a chalice (*positio schedulae in calicem*) placed on an altar for that purpose.

334.—4. The three *scrutatores*, meanwhile,[158] stand by the chalice and superintend the voting. When all the

[147] Ferraris, V. Papa, art. i., n. 40. [148] Ib., n. 41.
[149] Phillips, l. c., p. 852; cfr. ib., Const. Aeterni Patris of Gregory XV. (1621–1623). [150] Ferraris, V. Papa, art. i., n. 55–58.
[151] Phillips, Lehrb., § 107, p. 206.
[152] Phillips, Kirchenr., vol. v., pp. 876, 877. [153] Ib. [154] Ib.
[155] Ib., p. 877. [156] Ib., p. 878. [157] Ib., p. 879. [158] Ib., p. 880.

votes have been cast, the *scrutatores* at once begin to announce the votes (*publicatio scrutinii*) in this manner: the first *scrutator* takes one of the votes out of the chalice, opens it, and simply ascertains the name of the candidate voted for; he then hands the vote or ticket to the second *scrutator*, who likewise, having merely seen the name on it, passes it to the third *scrutator*, by whom the name is audibly announced to the cardinals. All the tickets are thus announced one by one.[159]

335.—5. When all the votes have been counted by the *scrutatores*, and it is found that the ballot is without result, no candidate having received the requisite two-thirds vote, the *accessus* must immediately begin.[160] The *accessus* consists in this, that the cardinals, by balloting as before, go over to one of the candidates who has received at least one vote in the *scrutinium* or first ballot.[161] In the *accessus*, as the word itself indicates, no cardinal can vote for or go over to the one for whom he voted in the *scrutinium*;[162] all, however, are obliged to vote, though they are free to go over to[163] some candidate or to stand by their first choice. A cardinal who goes over to some candidate votes thus: *Accedo N.* . . . A cardinal who does not wish to change his vote ballots thus: *Accedo nemini.*[164]

336.—6. When the *accessus* is over the votes are again counted as before in the scrutinium, and if, even then, it is found that no candidate has received the necessary two-thirds vote, the cardinals must, in their next meeting, unless they prefer to elect the Pope *per compromissum* or *quasi-inspirationem*, proceed to a second[165] ballot or *scrutinium*, and continue thus to ballot twice a day[166]—namely, in the morning and afternoon—until some candidate receives two-thirds of all the votes, and is thus canonically elected

[159] Phillips, l. c., pp. 883, 884.
[160] Ib., p. 886.
[161] Ib., pp. 886, 887.
[162] Ib., p. 887.
[163] Ib.
[164] Ib., p. 887.
[165] Ib., p. 888.
[166] Phillips, Lehrb., p. 206.

Pope.[167] The person thus elected, even though not yet in sacred orders, becomes immediately, upon consenting to the election, the Vicar of Christ on earth.[168] The new Pope, as a rule, lays aside his old and assumes a new name.[169]

337. The chief Catholic Powers — namely, Austria, France, Spain, and Naples—have each the right to veto (*exclusiva*) the election of an obnoxious candidate.[170] Each of these Powers exercises this right by deputing one of the cardinals to veto the election of the obnoxious person, when it becomes probable that he will be elected.[171] This veto, in order to be effective, must be interposed before any of the candidates receives the requisite two-thirds vote; for, as soon as one of the candidates has received such vote, and is therefore duly elected, the cardinals are no longer at liberty to change their vote, and hence the veto, if interposed at that time, would have no effect.[172]

338. Finally, if the Holy See falls vacant during the holding of an œcumenical council, the election [173] of the new Pope devolves, not upon the council, but remains with [174] the cardinals. Absent cardinals cannot vote by proxy.[175]

Art. IV.

Appointments to Bishoprics—Mode of Appointment in the United States.

339. *Q.*—1. By whom and how were bishops appointed at various times?

A. The history of appointments to episcopal sees may be divided chiefly into three periods.

[167] Craiss., n. 426. [168] Ib., n. 427. [169] Phillips, Lehrb., p. 207.
[170] Ib., Kirchenr., vol. v., p. 868. [171] Ib. [172] Craiss., n. 426.
[173] Constit. Pii IX. de Elect. Rom. Pont., Dec. 4, 1869, ap. Acta Conc. Vat. Frib. Brisgoviae, 1871, p. 95. [174] Ferraris, V. Papa, art. i., n. 45.
[175] Devoti, lib. i., tit. v., sect. i. § 3.

I. *First period.*—Christ himself[176] first chose his apostles. The apostles in turn appointed their successors, the bishops.[177] The clergy and people not unfrequently took part in the appointment of bishops, as made by the apostles.[178] Afterwards, appointments to bishoprics were, as a rule, made conjointly by the metropolitan, the bishops of the province, the clergy, and the people of the vacant[179] diocese. The elections seem to have been held usually in provincial synods. According to some canonists,[180] the people merely gave testimony of the character of the candidates; according to others, they actually exercised the elective franchise. It is certain that the laity are not jure divino possessed of the right of electing bishops.[181] In some instances, especially where it was feared that these elections might give rise to dissensions, the metropolitan sent some bishop (*episcopus visitator*) to superintend the election.[182]

340. Bouix[183] thus describes the mode of election of this period: *First*, the suffrage of the people or laity was necessary; *second*, that of the clergy of the vacant diocese was also required; *third*, the consent of the bishops of the province was, moreover, indispensable to the valid election of a bishop.

341. Bishops, however, were not unfrequently appointed, even during this epoch, directly by the Holy See; especially is this true in regard to the West, where for the first four centuries bishops were directly and solely appointed by the Holy See.[184]

342. II. *Second period.*—In the twelfth century the right

[176] Luc, vi. 13. [177] Tarquini, Jur. Eccl. Publ. Inst., p. 121.
[178] Phillips, Lehrb., p. 294, § 150. [179] Craiss., n. 429.
[180] See Ferraris, V. Episcopus, art. ii., n. 1, 2. [181] Tarqu., l. c., p. 119–130.
[182] Devoti, lib. i., tit. v., sect. i., n. 8.
[183] De Episcopo, vol. i., p. 179, edit. 1873.
[184] Phillips, Lehrb., § 98, pp. 185, 186; cfr. Devoti, l. c., n. 5.

of electing bishops became vested solely and exclusively in cathedral chapters.[185]

343. III. *Third period.*—Owing to abuses consequent on elections by chapters, the Sovereign Pontiffs began, in the fourteenth century, to reserve to themselves the appointment of bishops. Clement V. took the first step in this matter by reserving the appointment to *some* bishoprics; John XXII. increased the number, and Pope Benedict XII. (1334) finally reserved to the Holy See the appointment (*i.e.*, the election and confirmation) of all the bishops of the Catholic world.[186] Elections by chapters were consequently discontinued everywhere. Afterwards, however, the right of election was restored to cathedral chapters in some [187] parts of Germany, so that [188] in these parts only bishops and archbishops are still, as of old, canonically elected by [189] their cathedral chapters.

344. *Q.* Were the Roman Pontiffs guilty of usurpation in reserving to themselves the appointment of bishops?

A. By no means; for the Pope alone is, by virtue of his primacy, vested with *potestas ordinaria*, not only to confirm, but also to elect, bishops.[190] Hence it was only by the consent, express or tacit, of the Popes that others ever did or could validly elect bishops.[191]

345. *Q.* How are bishops promoted in the United States?

A. 1. The candidates for a vacant see are presented to the Propaganda by the bishops of the province to which the vacant diocese belongs.[192] For this purpose, whenever a see falls vacant, the bishops of the [193] province assemble

[185] Ferraris, V. Episcopus, art. ii., n. 5; cfr. Tarqu., l. c., p. 123.
[186] Phillips, l. c., p. 186. [187] Ib., p. 187.
[188] Ib., Kirchenr., vol. v., p. 401 seq.
[189] Ferraris, V. Episcopus, art. ii., n. 6–10. [190] Devoti, l. c., n. 5, 10.
[191] Bouix, De Episc., vol. i., pp. 184, 194; cfr. Conc. Trid., sess. xxiii., can. 8; sess. xxiv., cap. i. [192] Conc. Pl. Balt. II., n. 103. [193] Ib., n. 106.

either in provincial synod, *or* in other special meeting, to be convened by the metropolitan, as a rule, thirty days[194] after the vacancy, and discuss the merits of the candidates to be presented to the Propaganda. Three[195] names are then chosen by secret[196] suffrage, and are sent to Rome together with the *procès verbal* of the proceedings.[197]

346.—2. The bishops of the province only to which the vacant diocese belongs are,[198] as a rule, to be consulted in regard to the persons to be recommended to the Propaganda; but when the candidate belongs to a different province, both the metropolitan of such province and the bishop of such candidate are to be consulted.[199] In case the person to be chosen is to be an archbishop, or the coadjutor of an archbishop, all the metropolitans of the United States must be consulted.[200]

347.—3. The presentation of candidates, as made by the bishops of the United States, to use the language of the Propaganda, is to be considered, not as *electio*, *postulatio*, or *nominatio*,[201] but merely as *commendatio*, which imposes upon the Holy See no obligation to appoint any of the persons recommended by the bishops.[202]

348.—4. Each bishop should, every three years, send to his metropolitan and the Propaganda a list of the priests whom he thinks worthy of the episcopal office.[203]

349.—5. In regard to the part or share which the diocesan councillors in some places have in the presentation of candidates to the Holy See, the Eighth Prov. C. of Baltimore[204] says: "Singulorum consultorum erit, post mortem

[194] Cfr. Coll. Lac., vol. iii., pp. 167, 307. [195] Conc. Pl. Balt. II., n. 103.
[196] Ib., n. 106 (v.). [197] Ib. (vi.). [198] Cfr. Coll. Lac., pp. 41, 47, 48, 167.
[199] Ib., pp. 167, 201, 202, 240, 307, 312.
[200] Ib., p. 430; cfr. Conc. Pl. Balt. II., n. 104. [201] Coll. Lac., l. c., p. 48.
[202] Conc. Pl. Balt. II., n. 103. [203] Ib., n. 106.
[204] Decret. vi., ap. Coll. Lac., p. 162.

Episcopi, archiepiscopo, vel, eo mortuo, seniori episcopo scriptis referre, quosnam ad sedem vacantem promovendos quisque censeat."

350. *Q.* How are bishops appointed, or, rather, designated, in Canada, Ireland, England, and Holland?

A. 1. *In Canada* the method of recommending to the Holy See candidates to fill vacant bishoprics is substantially the same as in the United States. The presentation is made by the bishops.[205]

351.—2. *In Ireland* this mode obtains: "Metropolitanus in unum convocat, die et loco praefixo, parochos et canonicos vacantis dioeceseos, ut tres idoneos viros commendent, e quibus Summus Pontifex eligat, si velit, unum qui dioecesi vacanti praeficiatur." [206]

352.—3. *In England and Holland* this method is observed: When a diocese becomes vacant, three candidates are presented, or, rather, recommended, to the Holy See[207] by the cathedral chapter of the vacant diocese. The meeting of the chapter, to be held for this purpose within a month after the See becomes[208] vacant, is presided over by the metropolitan; or if he is hindered from being present, as also when the archiepiscopal see itself is to be filled, by the senior bishop. Neither the archbishop nor the senior bishop can take part in the voting. The chapter, being properly convened, proceeds to elect, by secret suffrage, three candidates to be presented to the Holy See. The names thus chosen, having been sent to the metropolitan, or, as the case may be, to the senior suffragan, and submitted by him to the other bishops, are then sent to Rome, together with the views of

[205] Ap. Coll. Lac., vol. iii., p. 686; cfr. ib., pp. 684 and 1233.
[206] Conc. Prov. Cassel, a. 1853, ap. Coll. Lac., l. c., p. 831.
[207] Instruct. S. C. de Prop. Fide, Apr. 21, 1852.
[208] Conc. Prov. Westmonast. I., a. 1852, Decr. 12.

the bishops and the minutes or acts of the election by the chapter.[209]

353. The presentation of candidates to the Holy See, as made in Canada, Ireland, England, and Holland, is to be regarded not as *electio* or *nominatio*, but merely as *commendatio*, imposing no obligation upon the Holy See to appoint any of the persons thus recommended.

354. *Q.* How are the officers of the civil government appointed in the United States?

A. Kent[210] answers: "The President is the efficient power in the appointment of the officers of the Government. He is to nominate, and, with the advice and consent of the Senate, to appoint, ambassadors or public ministers and consuls, the judges of the Supreme Court, and all other officers whose appointments are not provided for in the Constitution; but Congress may vest the appointment of inferior officers in the President alone, in the courts of law, or in the heads of departments."

Art. V.

Of Appointments to Non-Prelatical Offices, especially to Parishes —Appointments to Parishes in the United States.

355. Benefices or ecclesiastical offices are distinguished, 1, into *major* (*beneficia majora*), *v.g.*, the papacy, the cardinalate, the episcopal office, prelatures, and abbotships with *jurisdictio quasi episcopalis;* 2, into *minor* (*beneficia minora*), *v.g.*, the office of a parish priest, canon, and the[211] like. In the foregoing pages we considered the mode of appointment to the higher offices (*beneficia majora*) in the Church; in the

[209] Ap. Coll. Lac., vol. iii., pp. 924, 925, 950, 959; cfr. ib. 1233.

[210] Comment., vol. i., p. 287. New York, 1832. [211] Salzano, vol. iii., p. 229.

present we shall briefly discuss the mode of appointment to the lower ecclesiastical offices, especially parishes.

356. According to the *jus commune* of the Church, the power of appointment to these offices is vested in the Sovereign Pontiff *jure plenario;* in bishops, *jure ordinario;* and in others, *jure delegato.*[212]

357.—I. *Power of appointment, as vested in the Roman Pontiff.*—The Pope has full and supreme power (*jus plenum, jus summum, potestas absoluta et plenaria*) to fill all ecclesiastical offices or benefices[213] throughout the Catholic world; for he is the *episcopus universalis,*[214] the *ordinarius ordinariorum*[215] *et totius orbi,* and has *potestas plena gubernandi universalem Ecclesiam.*[216]

358. The Sovereign Pontiff may exercise this power of appointment in various ways—namely, 1, *jure concursus,*[217] inasmuch as he has concurrent power with inferior appointers; 2, *jure devolutionis,* when, for instance, bishops neglect to confer or fill benefices within the time fixed[218] by law; 3, *jure praeventionis*—namely, when the Pope enjoins that offices which are not as yet vacant[219] shall, upon becoming vacant, be given to a certain person: the[220] *jus praeventionis* can be exercised by[221] the Pope only; 4, *jure reservationis,* when the Pope reserves to himself the sole power of appointment[222] to certain benefices.

359. The Holy See no longer makes appointments *jure concursus* or[223] *praeventionis;* but it still *reserves* to itself the

[212] Soglia, vol. ii., p. 166; cfr. Ferraris, V. Beneficium, art. iv., addit. ex aliena manu, n. 1. [213] Phillips, vol. v., p. 470.

[214] Cfr. Leuren. For. Benef., part ii., quaest. 512 and 513.

[215] Ferraris, V. Benef., art. iv., n. 1. [216] Cfr. Conc. Vat., sess. iv., cap. iii.

[217] Reiff., lib. iii., tit. v., n. 154.

[218] Bouix, De Paroch., p. 309, edit. 1867. [219] Reiff., l. c., n. 152.

[220] Ib., n. 153. [221] Cfr. Conc. Trid., sess. xxiv., cap. xix., d. R.

[222] Leuren., l. c., quaest. 513.

[223] Bouix, De Paroch., p. 309; cfr. Salzano, vol. iii., p. 245.

appointment to some of the offices.[224] Now, what appointments are at present chiefly reserved to the Holy See? Some of them are contained in[225] the *corpus juris* (*reservationes in corpore juris clausae*); thus the appointment to all benefices[226] falling vacant *apud sedem apostolicam* or *in curia Romana*, is reserved to the Pope. A benefice is said to become[227] vacant *in curia* when its incumbent dies either in Rome or within forty Italian miles[228] of it. It is a disputed question whether the appointment to canonical parishes becoming thus vacant is reserved to the Pope. The affirmative is held by Bouix,[229] the negative by Soglia.[230] It is certain, however, that parishes presided over by rectors *amovibiles ad nutum*[231] are not included in the above reservation. Other appointments, still reserved to the Holy See, are *extra corpus*[232] *juris*. Thus, for instance, if an appointment to a canonical parish is made by the bishop, *non servata forma concursus*, the right of appointment in the case is forfeited by him and devolves on the Pope. The same holds true of all appointments to benefices made[233] contrary to the prescriptions of the Council of Trent.

360.—II. *Right of appointment as vested in the bishop of the diocese.*—The bishop is, according to the *jus commune*,[234] vested with the full and free[235] right of appointment (*collatio libera*) to all vacant parishes or benefices[236] in his diocese.

361.—III. *Cardinals* are generally possessed *jure delegato* of ample powers of making appointments to benefices.[237]

[224] Soglia, vol. ii., p. 168.
[225] Salzano, vol. iii., p. 245.
[226] Bouix, l. c., pp. 313, 314, 315.
[227] Phillips, vol. v., p. 517.
[228] Soglia, l. c., p. 169.
[229] L. c., p. 315.
[230] L. c., p. 169.
[231] Craiss., n. 445.
[232] Salzano, vol. iii., p. 245.
[233] Bouix, De Paroch., p. 317.
[234] Ib., p. 323.
[235] Phillips, Lehrb., p. 261.
[236] Devoti, lib. i., tit. v., n. 29; cfr. Ferraris, l. c., n. 30–34.
[237] Soglia, l. c., p. 181.

Where chapters are canonically established, the appointment of the canons of cathedral chapters belongs, as a rule, conjointly (*jus collationis simultaneae*) to the bishop and to the chapter.[238] Canons of collegiate chapters are elected by the chapters and instituted[239] by the bishop.

362.—IV. *Power of appointment, as vested in the bishops of the United States.*—Thus far we have spoken of the right of appointment as determined by the *jus commune*. We now examine the question in relation to the present exceptional status of the Church in the United States. We ask: To whom belongs the power of appointment to parishes in the United States? To our bishops solely and exclusively.[240] No appointments whatever are reserved to the Sovereign Pontiff, since, with us, there are no canonical parishes or benefices. For where the *jus commune*, whether *in corpore* or *extra corpus juris*, reserves appointments to the Holy See, it does so only in regard to parishes or offices that are canonically established. Thus, also, parochial *concursus* is obligatory, as a rule, only in appointments to *canonical* parishes, but not in the United States, where there are no such parishes, except perhaps one in New Orleans. Hence appointments in the United States, though made by bishops, *non servata forma concursus*, are valid, and consequently do not devolve on the Pope. Where there are canonically established chapters, the appointment of the *prima dignitas* in the chapter usually belongs[241] to the Pope.

363. Exempted nuns (or, rather, their regular superiors) have[242] the right to nominate their chaplain. As there are no exempted nuns in the United States, the chaplains of convents are all appointed by the bishop. We sum up: As there exists no canonical *jus patronatus* in this country, the *collatio libera—i.e.*, not only the appointment, but also the

[238] Bouix, De Capit., pp. 201, 202, 207, edit. 1862.
[239] Ib., p. 243.
[240] Conc. Prov. Balt. I., n. 1, 2; cfr. Conc. Pl. Balt. II., n. 112, 123, 124, 125.
[241] Craiss., n. 459.
[242] Ib., n. 460.

designation, of the person to be appointed—is in all cases vested in the bishop. The *ordinarius*, therefore, with us, designates and appoints all pastors, professors, chaplains, etc.

364.—V. *When appointments are to be made.*—Appointments to parishes and to all *beneficia minora* must be made within six months [243] from the day on which information was received of their vacancy. The appointment, if not made by the [244] bishop within the above time, devolves on the chapter, and, in its default, on the metropolitan. On the other hand, bishops or other persons having [245] the right to make appointments cannot promise to confer a parish or benefice before it actually becomes vacant. The Pope alone can confer, or promise to confer, benefices not yet vacant.[246] Appointments to parishes or other benefices,[247] when made by bishops, need not [248] be in writing.

Art. VI.

Installation (*Institutio Corporalis*).

365. Installation (*institutio corporalis*, *institutio realis*, *investitura*) is the induction into the actual possession of a [249] parish or benefice. Every appointment (*provisio*) includes three things: 1, the selection of the person to be appointed (*designatio personae*); 2, the appointment proper (*institutio canonica*, *collatio*); 3, the installation (*installatio*, *institutio corporalis*) or taking possession of the parish.[250] Now, an ecclesiastic, though appointed to a parish or benefice, cannot take actual possession [251] of it himself, but must be in-

[243] Phillips, Kirchenr., vol. vii., pp. 540, 541.
[244] Cfr. Soglia, vol. ii., § 95, p. 190.
[245] Ib., p. 191.
[246] Cfr. Phillips, l. c., pp. 525–536.
[247] Bouix, De Paroch., p. 306.
[248] Craiss., n. 383.
[249] Reiff., lib. iii., tit. vii., n. 8.
[250] Gerlach, Lehrb., p. 252; cfr. ib., pp. 273, 274.
[251] Phillips, l. c., pp. 508, 509.

stalled by the bishop or other person deputed by him. The bishop generally selects some priest (*v.g.*, the vicar-general or rural dean[252]) to discharge this duty.[253]

366.—*Q.* What is the custom in the United States relative to the installation of pastors?

A. As a rule, no installation whatever takes place. Clergymen appointed to parishes take charge of them without any ceremonies of induction. Nor is installation, strictly speaking, requisite, since with us there are no parish priests, in the canonical sense of the term.

[252] Gerlach, l. c., p. 273.

[253] Cfr. Soglia, l. c., p. 196.

CHAPTER VIII.

OF THE QUALIFICATIONS REQUIRED IN PERSONS WHO ARE TO BE PROMOTED OR APPOINTED TO ECCLESIASTICAL DIGNITIES AND OFFICES (DE QUALITATIBUS, ETC.).

ART. I.

Of the Requisite Qualifications in General.

367. Three qualifications are chiefly[1] required in persons to be appointed to ecclesiastical offices,[2] especially to the episcopal, to wit: The requisite age, purity of morals, and learning.[3]

368.—I. *Requisite age* (*aetatis maturitas*).—The law of the Church prescribes[4] that persons to be promoted to the episcopal dignity should have completed the thirtieth year of their age; those who are to be appointed to parishes should be twenty-four years old.[5] Persons who are to be appointed to these or other ecclesiastical offices before they have attained the proper age must in all cases[6] obtain a dispensation from the Holy See, otherwise the appointment is null and void, even though but an hour be wanting to the requisite age.[7] What has been said thus far does not, so far as appointments to parishes are concerned, apply to the United States, since our parishes are not, properly speaking, benefices. Hence, a priest in this country, if ordained at the age

[1] Phillips, vol. vii., pp. 545, 546. [2] Cap. Cum in Cunctis 7, § 1, de Elect.
[3] Conc. Trid., sess. vii., cap. i., de Ref.
[4] Cfr. Ferraris, V. Beneficium, art. v., n. 7, 8. [5] Devoti, tit. vi., n. 6.
[6] Phillips, Lehrb., p. 149. [7] Bouix, de Capit., p. 145, 1862.

of twenty-three, may also be appointed to a parish at that age.[8] No precise age is prescribed for the Papal dignity. It is, however, but proper that persons who are to be elected Popes should be at least thirty years old.[9]

369.—II. *Purity of morals* (*gravitas morum*).—The appointment of persons who are, 1, guilty of crimes, especially of luxuriousness, drunkenness,[10] and the like; 2, or who are *irregulares*, or under grave censure—*v.g.*, suspension or major excommunication[11]—is, *ipso jure*, invalid.[12]

370.—III. *Learning* (*litterarum scientia*).—A person may possess learning in a threefold degree: 1, in an *eminent degree*, when, without the aid of books, he can readily[13] explain even difficult questions; 2, in a *middling degree*, if, with the aid of books and upon deliberation, he is able to clear[14] up difficult questions; 3, finally, in a *sufficient degree* —*i.e.*, in a manner that enables him to discharge the duties of his office.[15] Now, it is a general principle that those persons only are appointable to ecclesiastical offices who have sufficient knowledge[16] to enable them to properly discharge the duties of the respective office. Hence, the particular degree of learning which is required in appointees varies according to the office to which they are appointed. Thus, in bishops, an eminent[17] degree of learning (*scientia eminens*) is very desirable, though a mediocre (*scientia mediocris*), nay, even a[18] sufficient degree (*scientia sufficiens*), may be tolerated. In order to insure a proper degree of learning in certain officials, the Church requires that, where it is possible, bishops, archdeacons, capitular vicars, vicars-general, professors of theology, and the like, should be licentiates or doctors either

[8] Cfr. Craiss., n. 467.
[9] Phillips, Lehrb., p. 148.
[10] Craiss., n. 469.
[11] Reiff., lib. i., tit. vi., n. 221.
[12] Phillips, l. c., p. 149.
[13] Reiff., l. c., n. 205.
[14] Ib.
[15] Cfr. Ferraris, V. Beneficium, art. v., n. 11, 12.
[16] Reiff., l. c., n. 206.
[17] Ib., n. 207.
[18] Cfr. Conc. Trid., sess. xxii., cap. ii., d. R.

in theology or canon law.[19] Parish priests and others charged with the *cura animarum* must be endowed with at least *scientia sufficiens.*[20] The Scripture says: "Quia tu scientiam repulisti, repellam te, ne sacerdotio fungaris mihi."[21]

371. To the above three qualifications two others are[22] added: 1. That the person to be appointed to any ecclesiastical office whatever should be born of lawful marriage (*thorus legitimus, natales legitimi*); those who are begotten out of lawful matrimony—*v.g.*, of concubinage—cannot receive any of the *ordines majores* or be appointed to any office to which the *cura animarum* is annexed, except upon receiving the necessary dispensation from the Holy See, or upon being legitimized *per subsequens matrimonium.*[23] Bishops, moreover, should be born of Catholic parents.[24] 2. Only ecclesiastics—that is, those who have at least the clerical tonsure and are therefore in *statu clericali*—can fill ecclesiastical offices. Laymen, therefore, are not[25] appointable. In most cases, moreover, the appointee should be in sacred orders.[26] In some parts of Europe—*v.g.*, in Austria, Bavaria, etc.—the person to be appointed—*v.g.*, to a parish and the like—should be, as far as practicable,[27] one that is acceptable (*persona grata*) to the civil government.

Art. II.

Is it Necessary to Appoint a Persona Dignior in Preference to a Persona Digna?

372. *Q.* What is meant by *persona indigna, digna*, and *dignior?*

A. 1. By *persona indigna* we mean one who is desti-

[19] Phillips, Lehrb., p. 149. [20] Reiff., l. c., n. 208. [21] Osee iv. 6.
[22] Craiss., n. 466. [23] Soglia, vol. ii., § 94, pp. 185, 186.
[24] Const. Onus Apost. Greg. XIV., 1590. [25] Soglia, l. c., pp. 184, 185.
[26] Phillips, Lehrb., p. 150. [27] Ib., Kirchenr., vol. vii., pp. 559, 560.

tute[28] of at least one of the qualifications above mentioned. 2. *Persona digna* is one who has in a[29] sufficient degree all the requisite capacities for the office. 3. The *persona dignior*[30] is one who possesses the requisite qualifications in a more perfect manner than the *persona digna*, and who therefore is better fitted for the office.[31]

373. *Q.* Is it allowed to appoint a *persona digna* in preference to a *persona dignior ?*

A. For bishoprics[32] and parishes it is necessary to select the *persona dignior*[33] in preference to the *persona digna*, and those who promote persons worthy indeed, yet less worthy than others, are guilty of mortal sin.[34]

374. *Q.* How far is this applicable to the United States?

A.—I. *Appointments to Episcopal Sees.*—1. Bishops in the United States are undoubtedly obliged, under pain of mortal sin, to recommend or propose to the Holy See, as candidates for bishoprics, not merely those who are worthy and competent (*digni*), but those who are the most worthy (*digniores*).[35] 2. This applies not only to bishops, but also to priests, in this country, who may be consulted as to the candidates[36] to be recommended to the[37] Holy See, or who may be permitted to present a list of names of,[38] or vote for, such candidates. 3. Nay, this holds true even with regard to laics, male or female, who in any way[39] have a part in the appointment of bishops. The Council of Trent[40] clearly

[28] Craiss., n. 475. [29] Reiff., lib. i., tit. vi., n. 235, 236.
[30] Ferraris, V. Beneficium, art. v., n. 40, 42. [31] Phillips, Lehrb., p. 152.
[32] Reiff., l. c., n. 238–246.
[33] Phillips, Kirchenr., vol. vii., p. 566; cfr. Ferraris, l. c., n. 17–27.
[34] St. Liguor., lib. iv., n. 91, 92; cfr. Conc. Trid., sess. xxiv., cap. i., d. R., and ib., cap. xviii. [35] Cfr. Bouix, De Episcopo, vol. i., p. 312, 1873.
[36] Cfr. Conc. Prov. Balt. X., n. iv., p. 61, Baltimore, 1870.
[37] Cfr. Conc. Prov. Balt. VIII., n. 6.
[38] Cfr. Coll. Lac., tom. iii., p. 312; cfr. our Notes, p. 100.
[39] Cfr. Bouix, l. c., pp. 312, 313.
[40] Sess. xxiv., cap. i., d. R.; cfr. Conc. Pl. Balt. II., n. 101, 107.

conveys this inference: "And as regards *all* and *each* of those who have, *in any way*, any right from the Apostolic See, or who *otherwise have a part in* the promotion of those to be set over the churches (*i.e.*, dioceses), they sin mortally unless they carefully endeavor that those be promoted whom they themselves judge the most worthy (*digniores*) of, and useful to, the Church."

375.—II. *Appointments to Parishes in the United States.*—In like manner, bishops with us, and others—*v.g.*, diocesan councillors—who take part in the appointment of pastors, would seem to commit mortal sin, unless they select[41] not merely a worthy (*persona digna*), but the most worthy, person (*persona dignior*) to fill a vacancy. For the very law of nature demands[42] that those who have the right of appointment to offices or charges, to which the care of souls is attached, shall appoint the worthiest from among the worthy. This obligation, then, devolves upon all who are vested with the power of appointment to parishes; it matters not whether parishes are canonically established or not.

376. *Q.* Is the appointment of a *persona digna* in preference to a *persona dignior* valid?

A. 1. Where appointments to parishes must be made *servata forma concursus*, the appointment of a pastor is, *ipso jure*, null and void, unless the *persona dignior* be appointed.[43] 2. In regard to other appointments—*v.g.*, to parishes (*beneficia curata*) where no *concursus* need take place—the question is disputed.[44] 3. The appointment of a *persona digna* to *beneficia simplicia* is admitted by all to be valid. 4. The appointment, however, of a *persona indigna*—*v.g.*, of one under censure, of bad morals, and the like—is always prohibited,

[41] Cfr. Conc. Trid., sess. xxiv., cap. xviii., d. R.

[42] Ferraris, V. Beneficium, art. v., n. 27. [43] Phillips, Lehrb., p. 152.

[44] Cfr. Reiff, lib. i., tit. vi., n. 248, 249; cfr. Soglia, vol. ii., pp. 188, 189.

nay, as a rule, *ipso jure* null[45] and void, or at least voidable.[46]

377. *Q.* Is it allowed to transfer priests of bad morals from one parish to another, instead of deposing them?

A. If the character of such priests is unknown in the new parish, and if there is a reasonable hope that by the change they will reform, it is unquestionably lawful to transfer them to another parish.[47]

[45] Reiff., l. c., n. 248. [46] Cfr. Craiss., n. 476. [47] Craiss., n. 488.

CHAPTER IX.

WHEN AND HOW DOES A PERSON LOSE JURISDICTIO DELEGATA (DE CESSATIONE JURISDICTIONIS DELEGATAE, OR DE CESSATIONE OFFICII JUDICIS DELEGATI)?

378. The principles laid down by us in regard to the loss of rescripts and privileges are also applicable to the loss of *jurisdictio delegata*. We shall here add only some brief remarks. *Jurisdictio delegata* lapses and is lost chiefly, 1, by the death[1] of the *delegans*, provided the trial has not as yet begun (*re adhuc integra*);[2] 2, when the *delegatus* himself declares that he has no jurisdiction in the case; 3, by the withdrawal of the commission or mandate on the part of the[3] *delegans* (*revocatione*)—*jurisdictio delegata* may be *validly* withdrawn *sine causa*;[4] 4, when the time fixed for deciding the matter has elapsed; 5, when the *delegatus* has disposed of the matter or cause committed to him (*finito negotio*)—*v.g.*, by pronouncing definitive sentence[5] in a case; 6, by recusation; 7, by the death of the *delegatus*, provided the commission was given to him personally (*delegatio personalis*), not[6] merely on account of his office (*delegatio realis*). In order to ascertain when a *delegatio* is *personalis* or *realis*, it is necessary to examine the[7] *formula delegationis*. If the instrument of delegation expresses the name of the *delegatus*, being[8] formulated, *v.g.*, thus, "Tibi *Sempronio* delegamus hanc causam," the *delegatio* is, as a rule, *personalis*; if it mentions the office and title only, reading, *v.g.*, thus, "Episcopo Novar-

[1] Reiff., lib. i., tit. xxix., n. 125. [2] Phillips, Lehrb., p. 372, § 178. [3] Ib.
[4] Craiss., n. 491. [5] Reiff., l. c., n. 125. [6] Phillips, l. c., p. 372.
[7] Soglia, vol. ii., p. 450, § 201. [8] Reiff., l. c., n. 126.

censi delegamus hanc causam," the[9] *delegatio* is generally *realis*, and passes to the successor in office, even when the *causa* is *adhuc integra*. We said, as a rule; for these formulas do not always determine the[10] nature of the delegation. In fact, sometimes the instrument of delegation leaves it doubtful whether the *delegatio* is *realis* or *personalis*—*v.g.*, if it mentions not only the name of the *delegatus*, but also his title or dignity, being couched, for instance, in these words, "Tibi Antonio Episcopo Frisingensi," etc. In this case, the context, subject-matter, etc., of the instrument are to be considered in order to determine the character of the *delegatio*. Should no decision be reached in this manner, the *delegatio* must be[11] looked upon as *personalis*.

379. The *facultates*, both *ordinariae* and *extraordinariae*, which our bishops hold from the Holy See, are delegated to them personally,[12] and are therefore *delegationes personales*, not *reales*. Hence, these faculties lapse at the demise of the ordinary, and do not pass to the successor[13] in office. The new bishop, therefore, must have his faculties renewed. *A fortiori*, the *facultates*, are not[14] exercisible by administrators of dioceses, except when they are specially delegated to that effect by the Holy See. The *facultates* contained in the *Form. I.* are usually delegated to them either by the bishop, while yet alive, or after his death by the metropolitan or senior suffragan bishop.[15]

[9] Reiff., n. 127. [10] Cfr. Soglia, l. c. [11] Reiff., l. c., n. 128.
[12] Cfr. Craiss., n. 494, 495.
[13] Cfr. Bened. XIV., De Syn. Dioec., lib. ii., cap. ix., n. 3.
[14] Cfr. Conc. Prov. Balt. X., ap. Coll. Lac. iii., pp. 577, 584, 585, 596, 599.
[15] Cfr. Conc. Pl. Balt. II., n. 96, 97, 98.

CHAPTER X.

HOW A PERSON MAY LOSE AN ECCLESIASTICAL OFFICE AND THEREFORE JURISDICTIO ORDINARIA (DE CESSATIONE JURISDICTIONIS ORDINARIAE ET VACATIONE OFFICIORUM ECCLESIASTICORUM).

380. *Jurisdictio* is *ordinaria* when it is annexed to and exercised by virtue of an office; hence, a person who is appointed to the office obtains, *ipso facto*, *jurisdictio ordinaria*; on the other hand, one who loses the office loses, *eo ipso*, *jurisdictio ordinaria*. The loss of the one, therefore, is equivalent to the loss of the other, and vice versa. Now, ecclesiastical offices may be lost, and thus fall vacant, not only by the death of the incumbent, but also, 1, by resignation; 2, translation; 3, privation; 4, and in several other ways, as we shall see. Canonists, therefore, properly[1] say that a person may lose an ecclesiastical office in two ways: either voluntarily, as by resignation, or compulsorily, as by removal.[2]

ART. I.

Of Resignations (*De Dimissione seu Renuntiatione Officiorum Ecclesiasticorum*).

381. By resignation (*renunciatio, cessio, resignatio, spontanea dimissio*) is meant the act[3] by which an ecclesiastic, of

[1] Devoti, lib. i., tit. viii., n. 2.
[2] Soglia, vol. ii., p. 198.
[3] Salzano, lib. iii., p. 257.

his own free will, gives up his office or benefice into the hands—*i.e.*, with the consent—of the proper ecclesiastical superior.[4]

382. From this definition it will be seen that a resignation, in order to be valid, must be, 1, voluntary—that is, not extorted[5] by fear, violence, or deceit and[6] cunning; forced resignations are rescindable. A person, however, does not suffer[7] violence, properly speaking, who, being guilty of some crime, resigns his office for fear of being juridically[8] deprived of it. 2. Resignations must be wholly exempt from simoniacal[9] stipulations—*i.e.*, bargains or contracts to give or receive money or any other temporal thing for the resignation. 3. Finally, the resignation must be accepted by the proper ecclesiastical superior; otherwise it is invalid and of no effect, and the resigner may be compelled to reassume[10] his office. We say, 1, *ecclesiastical superior*, hence no bishop or priest can resign into the hands[11] or on demand of secular rulers; we say, 2, *proper superior*, for it is a general rule that an office can be resigned into the hands of that superior only who is[12] vested with the power of appointment to such office. Thus, bishops can tender their resignations to the Pope only. Parish priests and others holding of the ordinary[13] must, *as a rule*, resign into the hands of the bishop of the diocese, and, according to some,[14] into the hands of vicars capitular (administrators in the United States) *sede vacante*. Vicars-general can accept resignations only when specially empowered by the bishop to do so. We said above, as a rule; because resignations which are tendered by parish priests and the like condition-

[4] Phillips, Lehrb., § 85, p. 161.
[5] Ib., note vii.
[6] Soglia, l. c., p. 199.
[7] Reiff., lib. i., tit. ix., n. 3.
[8] Craiss., n. 502.
[9] Reiff., l. c., n. 75–82.
[10] Ib., n. 13.
[11] Cfr. Phillips, Kirchenr., vol. vii., p. 849.
[12] Phillips, Lehrb., p. 162.
[13] Ib., Kirchenr., l. c., pp. 850, 851, 852.
[14] Ib., pp. 850, 851; cfr. Craiss., n. 509.

ally, not absolutely, can be accepted by the Pope only, not by bishops.[15]

383. *Q.* How many kinds of resignations are there?

A. 1. Resignations are tacit and express. They are tacit (*renunciatio tacita*) when offices or parishes are given up, not in express words, but by an action which, according to law, entails the loss[16] of the office—*v.g.*, if a cleric in minor orders gets married, or if a person takes solemn vows in a religious order approved by the[17] Church. A resignation is express (*renunciatio expressa*) when the office is resigned in express words or[18] in writing. 2. Express resignations are either absolute (*renunciatio pura*)—namely, when tendered unconditionally—or they are conditional (*renunciatio conditionalis*) when, for instance, persons resign their office for the sake of exchanging it for another or in favor of a third party (*in favorem tertii*)—that is, on condition only that the office be bestowed, *v.g.*, on Caius, a relative.[19] 3. Finally, we distinguish the *resignatio loci tantum* from the *resignatio loci et dignitatis*. Thus, bishops sometimes, though very rarely,[20] resign *quoad locum et dignitatem simul*, and then[21] they cannot lawfully perform any episcopal function, even with the consent of the ordinary. Nevertheless, orders conferred by them are valid, since[22] the *character ordinis episcopalis* is indelible and cannot be taken away by man. Ordinarily bishops resign in this manner, only in order to embrace the monastic state or to prevent juridical deposition.[23] Bishops usually resign *quoad locum tantum*, in which case they may exercise episcopal functions wherever they may be requested to do so by the *ordinarius loci*.[24]

[15] Phillips, Lehrb., p. 163; cfr. Soglia, vol. ii., p. 200.
[16] Soglia, l. c., p. 198. [17] Reiff., l. c., n. 9. [18] Soglia, l. c., p. 199.
[19] Reiff., l. c., n. 12. [20] Craiss., n. 500.
[21] Cfr. Devoti, lib. i., tit. viii., n. 7.
[22] Ferraris, V. Episcopus, art. iii., n. 76–82. [23] Ferraris, l. c., n. 72.
[24] Ib., n. 76, 77.

384. *Q.* What persons can resign their offices?

A. Generally speaking, any ecclesiastic may, for just cause,[25] resign his office. We say, *generally speaking*, because there[26] are several exceptions. Thus, 1, no cleric, whether sick or well at the time, can resign within twenty[27] days of his death; 2, no person in sacred orders can, as a rule,[28] resign his office or benefice unless it be certain that he can live comfortably[29] from other sources.[30] Thus, priests in the United States cannot obtain their *exeat* unless they are to be received into another diocese, or have sufficient means for an honest livelihood, or enter a religious community.

385. *Conditional resignations.*—These are: I. Resignations tendered for the purpose of exchanging places. Now, two ecclesiastics are said to exchange places (*permutatio beneficiorum*) when they mutually[31] resign on condition that the office or position of the one be given to the other, and vice versa.[32] Ecclesiastics may, for just reasons, exchange places with each other,[33] provided it be done by authority of the proper superior. Thus, bishops can exchange sees with one another only by authority of the Sovereign Pontiff; priests can exchange places (*v.g.*, parishes) with each other only by permission of the bishop in whose diocese the exchange is to[34] take place.[35] Ecclesiastics exchanging their places without the consent of the respective superior are to be deprived of their positions[36] or offices; nevertheless, they may lawfully arrange and agree[37] among themselves beforehand as to the exchange to be made afterwards with the permission of the bishop.[38]

[25] Craiss., n. 501. [26] Reiff., lib. i., tit. ix., n. 43. [27] Ib., n. 45.
[28] Ib., n. 46, 47. [29] Cfr. Conc. Trid., sess. xxv., cap. xvi., d. R.
[30] Gerlach, p. 275. [31] Soglia, vol. ii., p. 200. [32] Gerlach, p. 275.
[33] Phillips, Kirchenr., vol. vii., p. 869 seq.; cfr. ib., p. 861.
[34] Devoti, lib. i., tit. viii., n. 16. [35] Cfr. Reiff., l. c., n. 82–90.
[36] Soglia, l. c., pp. 200, 201. [37] Reiff., l. c., 102, 103.
[38] Phillips, l. c., pp. 869, 870.

386.—II. Another conditional resignation is that which is made *in favorem tertii* or *prospectu amici*—namely,[39] when an ecclesiastic resigns his place only on the express condition that it shall be conferred upon a person designated by himself. It is commonly held that resignations of this kind can take place only by explicit Papal dispensation,[40] not by permission of bishops.[41] The resigner may, however, lawfully recommend a certain person to the bishop, and express his desire to[42] see him appointed to the office.

387.—III. A third kind of conditional resignations is that which is[43] made *cum reservatione pensionis*—namely, when an ecclesiastic resigns,[44] on condition of receiving an annuity (*pensio*) from the income of the benefice given up by him. Generally speaking, resignations of this kind can be accepted by the Pope[45] only, not by bishops. We say, *generally speaking;* for bishops may permit these resignations in certain cases—*v.g.*, lest an ecclesiastic who resigns his parish on account of old age[46] or sickness should remain without sufficient means of support.

388.—IV. The other conditional resignations are: 1. *Resignatio cum conditione regressus*—namely, when the resigner gives up his place on condition[47] of being reinstated in it at the death of the resignee. 2. *Resignatio cum conditione ingressus*, which[48] consists in this, that the person appointed to a place is obliged, even before taking possession of it, to leave it to another. 3. *Resignatio cum conditione aggressus*,[49] by which an office, being destined for a person under age at the time, is meanwhile given to another, who must resign it when the minor becomes of age. The *jus aggressus* and the *jus regressus* are expressly prohibited by

[39] Phillips, l. c., pp. 860, 861.
[40] Ib., p. 863.
[41] Reiff., l. c., 106–109.
[42] Ib., n. 112, 113.
[43] Phillips, l. c., p. 867.
[44] Gerlach, p. 274.
[45] Reiff., lib. iii., tit. xii., n. 86–89.
[46] Ib., n. 89, 90.
[47] Phillips, l. c., p. 860.
[48] Ib.
[49] Ib.

the Council of Trent,[50] and can be permitted by the[51] Pope only.

389. *Q.* When do resignations take effect—*i.e.*, when is a resigner obliged to discontinue the exercise of the office resigned by him?

A. The general rule is that[52] absolute resignations take effect as soon as they are accepted by the proper superior; conditional resignations, only when the conditions agreed upon are fulfilled. Hence, 1, the resignation of a bishop takes effect—*i.e.*, the see becomes vacant—as soon as the resignation is accepted in the Papal Consistory; the bishop may, however, continue to exercise episcopal functions until properly notified[53] of the action of the Holy See; 2, a parish priest who resigns cannot, once the resignation is accepted by the bishop, exercise parochial functions in the parish resigned, except by special permission of the bishop. Hence, the bishop should appoint a vicar or administrator to take charge of the parish until a new rector is appointed.[54]

390. *Resignation of Pastors in the United States.*—The foregoing does not, strictly speaking, apply to this country; for, with us, there are no canonical parishes. Our pastors exercise *jurisdictio*, not *nomine proprio*, but *nomine episcopi*, and are therefore vested only with *jurisdictio delegata*, not *ordinaria*. We say, *strictly speaking;* for persons having but *jurisdictio*[55] *delegata* may resign no less than those having *jurisdictio ordinaria*. It would seem, therefore, that pastors in the United States may resign their charges in the manner above mentioned.

[50] Sess. xxv., d. R., cap. vii.
[51] Phillips, l. c., pp. 871, 872.
[52] Ib., Lehrb., p. 165.
[53] Craiss., n. 511, 512.
[54] Ib., n. 513.
[55] Craiss., Elementa, n. 285.

Art. II.

Of Transferring Ecclesiastics from one Place to Another (De Translatione).

391. An ecclesiastical office may also become vacant, as was seen, by reason of its incumbent being[56] changed or transferred (*translatio*) to another place.[57] Ecclesiastics cannot be transferred except by authority of the proper superior. Thus, bishops are transferred by the Holy See;[58] parish priests by their bishops.[59] In like manner, bishops cannot, without permission from the Holy See, transfer their sees from one city to another in the diocese, nay, not even from one church to another in the same city.[60]

392. *Causes that render changes or transfers lawful.*—It is a general principle that ecclesiastics should not be transferred from one place to another without sufficient reasons[61] (*causae justae*). Now, the reasons for which bishops, parish priests, and the like may be changed by their respective superiors are reducible[62] chiefly to two: 1, *utilitas—v.g.*, if the transfer is believed to be conducive to the good either of the entire Church or of a particular church, whether episcopal or parochial, to which a person is to[63] be transferred; 2, *necessitas—v.g.*, if a bishop cannot remain in his diocese, or a parish priest in his parish, on account of the unwholesomeness of the climate, or by reason of persecutions, etc.[64]

393. *Q.* Can the Pope transfer bishops even against their will?

A. The question is controverted.[65] According to some

[56] Phillips, Lehrb., § 87, p. 165.
[57] Cfr. Reiff., lib. i., tit. vii, n. 2.
[58] Ib., n. 3.
[59] Phillips, l. c., p. 166.
[60] Salzano, lib. iii., p. 256.
[61] Phillips, l. c.
[62] Devoti, lib. i., tit. viii., n. 15.
[63] Reiff., l. c., n. 10.
[64] Craiss., Man., n. 522, 523.
[65] Ib., n. 525.

canonists, the Pope may do so *ex causa justa*, but not[66] *pro libitu*. The question is of no practical consequence, since, at the present day, bishops are not transferred against their will.[67] Generally speaking, a bishop is transferred only from an inferior to a greater see.[68] We say, *generally speaking;* since, in case special reasons so demand, a prelate may be transferred from an archiepiscopal to an episcopal see, nay, from a bishopric to a parish.[69]

394. *Q.* Can a bishop transfer parish priests against their will?

A. Parish priests who are *inamovibiles* cannot be transferred against their will from one parish to another, except *ex motivo gravi*.[70] A parish priest of this kind, if transferred by the bishop for grave reasons—*v.g.*, because he has alienated the good will of his parishioners by harshness, violent temper, and the like—is entitled to another parish having revenues equal, or at least nearly equal, to those of his former parish.[71]

395. *Q.* Can bishops in the United States transfer pastors against their will?

A. As all our pastors[72] are *amovibiles ad nutum episcopi*, save one in the city of New Orleans,[73] they can be transferred against their will, *validly* indeed,[74] though not *lawfully*, except for sufficient reasons (*nisi ex causa justa*).[75] Nor can they be lawfully changed to an *inferior parish* or mission, save in punishment for delinquencies.[76] Hence, priests in the United States are not *obligated*[77] to accept of any and every mission offered them by the bishop, though

[66] Reiff., l. c., n. 20–27. [67] Phillips, Lehrb., p. 166. [68] Reiff., l. c., n. 7.
[69] Ferraris, V. Episcopus, art. iii., n. 48. [70] Craiss., n. 527.
[71] Ib. [72] Conc. Pl. Balt. II., n. 108, 125.
[73] Our Notes, etc., pp. 108–110. [74] Cfr. Craiss., l. c.
[75] Cfr. Phillips, Lehrb., pp. 166, 167. [76] Cfr. ib., p. 167.
[77] Cfr. Instructio S. C. Prop. Fid. Circa Decr. Conc. Prov. Balt. I., ap. Conc. Balt., pp. 64, 65. Baltimore, 1851.

they are *admonished* "ut non detrectent vacare cuilibet missioni ab episcopo designatae." [78] Of course, no priest can leave his mission without permission from his bishop.[79]

396. *Effects of Translation.*—The office, whether it be that of a bishop or pastor, from which a person is transferred, becomes vacant,[80] *ipso jure*, by the transfer; hence its income no longer goes to the person transferred.

397. *Q.* At what precise time does a person transferred lose jurisdiction in the diocese or parish from which he is changed?

A. There is question of the translation either of a bishop from one see to another, or of an ecclesiastic from an inferior to a higher position—*v.g.*, from a parish to a bishopric—or, finally, of an ecclesiastic to a non-prelatical office—*v.g.*, from one parish to another.[81] 1. If a bishop is transferred at his own request,[82] or with his knowledge and consent, he loses *jurisdictio ordinaria* in the diocese from which he is changed [83] the moment he receives *certain* information that his translation has been decreed in Papal Consistory. It matters not whether the information comes through letters from the Secretary of the Sacred College, or in any other way, provided it is such as may be relied upon. Nay, the very moment a bishop is transferred in Consistory, and consequently before he is informed of the fact, he loses the power of appointment to parishes that become vacant at the time.[84] If, however, a bishop is transferred without his knowledge, he does not, *as a rule*, lose jurisdiction, as stated above, except on giving his consent.[85] Practically speaking, however, this supposition is of no consequence; [86] for, as Benedict XIV.[87] writes, *juxta vigentem disciplinam*, "transla-

[78] Conc. Pl. Balt. II., n. 108.
[79] Cfr. Instructio, cit.
[80] Phillips, l. c., p. 167.
[81] Craiss., n. 528.
[82] Reiff., l. c., n. 35–41.
[83] Bouix, De Episc., vol. i., pp. 390, 391.
[84] Ib., vol. i., p. 391.
[85] Ferraris, V. Episcopus, art. iii., n. 62.
[86] Bouix, l. c., pp. 390, 391.
[87] De Syn. Dioec., lib. xiii., cap. xvi., n. 13.

tiones nunc minime fiunt, nisi praevia scientia et consensu episcopi, qui ab una ad aliam Ecclesiam est transferendus." 2. In the second case, if, for instance, a pastor is elevated to[88] the episcopate, he loses his parish, ipso facto, the moment he is consecrated bishop, or when the time for the consecration has elapsed—to wit, three months after being confirmed by the Holy See.[89] 3. A parish priest, for instance, who is transferred from one parish to another, loses the old as soon as he has, or could have, obtained peaceable possession of the new parish.[90]

398. *Q.* Until what time can a person receive his income or salary from the church whence he is transferred?

A. 1. A bishop who is transferred from one see to another, with his own consent, can draw his income from the diocese which he leaves only up to the[91] moment his translation is pronounced in Papal Consistory. If, however, a bishop is transferred without his knowledge,[92] he may draw his income in the usual manner from the old diocese until he gives his consent to the translation. 2. An ecclesiastic (*v.g.*, a pastor) promoted to a bishopric has the right to draw his salary from his[93] parish or office down to the time of his consecration, or till the lapse of three months after his confirmation as bishop. 3. Pastors, for instance, who are transferred from one parish to another,[94] may receive the income of the old parish until they have possession of the new one. This is also the custom of this country.

399. *Q.* To whom belong the proceeds of an office during its vacancy?

A. To the vacant church. Hence, the revenues of a vacant bishopric or parish should be used to defray the necessary expenditures of the vacant church; what is left

[88] Cfr. Blackstone, 1 Com., ch. xi

[89] Craiss., n. 529.

[90] Cap. Licet Episc. xxviii., De Praebendis in 6to.

[91] Bened. XIV., l. c., n. 7.

[92] Ib., n. 13.

[93] Craiss., n. 532.

[94] Ib., n. 533.

goes, as a rule, to the successor[95] in office. This, it would seem, applies also to the *cathedraticum* received by bishops in the United States.

400. *Q.* How are the fruits or products of a benefice to be divided between the one who is transferred or has resigned and his successor in office?

A. This question has reference[96] chiefly to the produce, fruits, or crops gathered from tracts of land often attached to parishes in Europe, and sometimes also in the United States.[97] The question, as stated, is controverted. Ferraris,[98] with others, holds that only the crops which are already harvested (*fructus percepti*) belong to the predecessor[99] or first titulary, while the crop not yet gathered in, or the fruits which are still hanging or unplucked (*fructus pendentes et inexacti*), pertain to the church or the successor in office. Others, however, maintain that the *fructus pendentes* also belong to the person transferred, *pro rata*[100] *temporis*. The maintenance of bishops in the United States is derived from the *cathedraticum*[101] and the salary of the cathedral. In the case of translation or death of a bishop with us it would seem that the cathedraticum,[102] though already received by the transferred or deceased bishop, should be divided, *pro rata temporis*, between the predecessor or his heirs and the successor in office.

Art. III.

How Ecclesiastics are Removed from Office (*De Privatione Officiorum Ecclesiasticorum.*)

401. Ecclesiastics may be dismissed or removed from office in two ways: 1, either upon due trial and by juridical

[95] Craiss., n. 534.
[96] Cfr. Ferraris, V. Episcopus, art. iii., n. 65.
[97] Cfr. Kenrick, Mor. Tract. x., n. 36.
[98] L. c., n. 63–66.
[99] Cfr. Craiss., n. 535.
[100] Ap. Ferraris, l. c., n. 66.
[101] Cfr. our Notes, etc., pp. 86, 87.
[102] Cfr. Conc. Pl. Balt. II., n. 100.

sentence (*privatio juridica*); 2, or without such trial and sentence (*simplex revocatio, destitutio*).[103] The *withdrawal of faculties*, as customary in the United States, corresponds to *revocatio*. Ecclesiastics cannot, as a rule, be dismissed from office against their will, except upon due trial and by juridical sentence. We say, *as a rule;* because ecclesiastics who are *amovibiles ad nutum* may be, even against their will, dismissed without such trial or sentence.

402. Juridical dismissal is of three kinds: 1, *privatio beneficiorum*[104] or *privatio simplex*, by which an ecclesiastic is removed merely from office, but not disqualified from holding offices in future; 2, *depositio*, by which an ecclesiastic is not merely dismissed, but also disqualified for ever to hold office in future or exercise ecclesiastical functions; 3, *degradatio*, moreover, causes the loss[105] of ecclesiastical privileges, especially[106] of the *privilegium fori et canonis*. At present we shall merely point out, 1, the *officia inamovibilia—i.e.*, offices which can be taken away from ecclesiastics only by judicial sentence; 2, the *officia ad nutum amovibilia—i.e.*, those from which a cleric may be removed *ad nutum—i.e.*, without judicial proceedings.

§ 1. *Offices whose Incumbents are Irremovable* (*Officia Inamovibilia*).

403. Offices of this kind are chiefly those of bishops, canons, and canonical parish priests.

404.—I. *Dismissal of Bishops from their Office.*—Jansenists and no small number[107] of Gallican authors assert that, prior to the Council of Sardica (anno 347), the right to pronounce *definitively* sentence of deposition against bishops was vested *exclusively* in provincial councils, so that not[108] even the right of appeal to the Holy See was allowed.

[103] Craiss., n. 539. [104] Phillips, Lehrb., § 188, p. 396. [105] Gerlach, p. 244.
[106] Cfr. Reiff., lib. v., tit. xxxvii., n. 22, 27, 32, 34. [107] Cfr. Craiss., n. 540.
[108] Cfr. Bouix, De Episc., vol. i., pp. 318, 319.

This assertion, it need scarcely be said, is without even a shadow of foundation. Pope Julius I. (a. 336–352), for instance, in his letter to the[109] Arian bishops, by whom Athanasius[110] had been deposed, explicitly[111] asserts that, *according to the custom or discipline then prevalent in the Church* (namely, in the fourth century), final sentence should not be pronounced upon bishops by provincial councils, except by command or direction of the Holy See. In like manner, Pope Gelasius[112] (492–496), in his epistle to the bishops of Dardania, distinctly affirms that the Holy See, *in accordance with established usage* (*more majorum*), not unfrequently reinstated bishops who had been deposed by provincial councils. Hence, we may safely lay down the following proposition: *The power of deposing bishops was at all times reserved exclusively to the Roman Pontiff.*[113] Bishops, it is true, were not unfrequently, down to the Middle Ages, deposed by provincial councils; but this judgment could be set aside, nay, it would seem had no effect, as a rule, unless affirmed by the Holy See. Provincial councils, therefore, at most, were courts of the first instance (*in prima instantia*), at least in some sense.

405. *Discipline of the Church at the Present Day relative to the Dismissal of Bishops.*—1. The *causae majores*[114] *criminales* against bishops—those, namely, which merit deposition (*depositio*) or deprivation (*privatio*)—can be decided, even *in prima instantia*, by the Sovereign Pontiff only.[115] The exclusive reservation of this right to the Pope began in the Middle Ages,[116] and was confirmed by the Council of Trent. The right itself is inherent in the Primacy; the Pope, as the

[109] Craiss., n. 541. [110] Cfr. Labbe, Conc., tom. ii., p. 494.
[111] Cfr. Wouters, Hist. Eccl., vol. i., p. 96.
[112] Cfr. Darras, Eccl. Hist., vol. ii., p. 46.
[113] Bouix, De Epis., vol. i., p. 322. [114] Ib., p. 323.
[115] Conc. Trid., sess. xxiv., cap. v., d. R.
[116] Phillips, Lehrb., § 99, pp. 187, 188.

chief pastor, is the *judex ordinarius* of bishops. 2. If criminal causes of bishops are tried in Rome, the Sovereign Pontiff should personally take cognizance of them;[117] *de jure extraordinario*, however, he may, in fact does, authorize others—*v.g.*, committees of cardinals[118]—to act in his stead. Thus, at present, the *S. C. Episcoporum* takes cognizance of grave charges against bishops, and even pronounces sentence of deposition, *facto*, however, *verbo cum Sanctissimo* (*i.e.*, *Papa*) *per secretarium*. Criminal charges against bishops in the United States, and missionary countries in general, are adjudicated upon by the Propaganda. 3. If, however, the hearing of the case or trial must take place[119] on the spot, or in the province to which the accused bishop belongs (*v.g.*, because the evidence sent to Rome does not sufficiently establish the guilt of the defendant), the Pope should, as a rule, appoint none but archbishops or bishops to investigate the case and report the facts to the Holy See, by whom alone, even in this instance, judgment is to be pronounced. 4. The less criminal causes of bishops are determined upon by provincial councils. 5. The Roman Pontiff cannot,[120] at least lawfully, depose bishops except for legitimate cause. Nor should he, as a rule, depose them without trial. We say, *as a rule*;[121] for all Catholic writers seem to agree that, under certain circumstances—when, namely, the welfare of the Church so demands—bishops may be deposed without the ordinary forms of judicature, as was done in France in 1801.[122]

406.—II. *Canons*, and the greater number of beneficiaries, are also, though only by ecclesiastical institution, irremovable. Hence, they are not deposable, save by trial and juridical sentence.[123]

407.—III. *Parish priests*, in the canonical sense of the

[117] Bouix, l. c., vol. i., p. 324.
[118] Cfr. ib., p. 329.
[119] Conc. Trid., sess. xxiv., cap. v., de Ref.
[120] Craiss., n. 549.
[121] Ib., n. 550.
[122] Ib.
[123] Ib., n. 551.

word, are of two kinds. Some are appointed for life (*parochi inamovibiles*); others are *amovibiles ad nutum.*[124] According to the present discipline[125] of the Church, parish priests proper are, as a rule, *inamovibiles.* We say, *as a rule;* for in some places—*v.g.*, in France—there are canonical parish priests who are, nevertheless, *amovibiles ad nutum episcopi.* Parish priests, in the strict sense of the term, are therefore not necessarily[126] irremovable. Bouix contends, moreover, that a church or congregation may be erected into a canonical parish, even though no *beneficium* be founded in or attached to it;[127] that, consequently, a canonical parish priest need not necessarily have a *beneficium parochiale.* All that appears to be requisite is that the parish priest should have a fixed and sufficient income,[128] no matter whether it is derived from pew-rents, collections, donations, and the like, or otherwise.

408. *Mode of Dismissal* (*Privatio Parochiae*, *Depositio*) *of Irremovable Parish Priests. Rule I.—Irremovable rectors of parishes* (*parochi inamovibiles*) *cannot be dismissed, except propter causam gravem, notoriam, et servato juris ordine.*[129] The crime, therefore, for which dismissal may be inflicted, must be not only *grievous*, but also *notorious.* Now, it may be notorious in two ways: 1, *notorietate juris*, when the guilty party has either been convicted on trial or has confessed his guilt; 2, *notorietate facti*, if the crime is so universally known as not to be in any way concealable—*v.g.*, in case the deed was committed on a public road and in presence of a large number of people.

409. *Rule II.—A bishop cannot dismiss parish priests ex informata conscientia—i.e., without a regular trial.*[130] This follows from the rule just given above. Canonists, in fact,

[124] Craiss., n. 552.
[125] Phillips, Lehrb., p. 342, § 168.
[126] Bouix, De Paroch., pp. 192, 193.
[127] Ib., p. 197.
[128] Cfr. our Notes, pp. 118, 120.
[129] Bouix, l. c., p. 365.
[130] Ib., p. 366.

unanimously agree that dismissal from a parish (*privatio parochiae*) can take place only upon regular trial (*servato juris ordine*). Moreover, the Council of Trent[131] empowers bishops to proceed *ex informata conscientia* or *extrajudicialiter* only in *suspending* ecclesiastics, but not in depriving them of[132] their parishes.

410. *Rule III.*—"*Generally speaking, the sentence of dismissal from a parish can be pronounced only when the guilt of the accused is fully and conclusively established* (*probatio plena*), *but not upon mere hearsay.*"[133] These three rules apply not only to the mere *privatio parochiae*, but also to the *depositio* proper.[134]

§ 2. *Offences for which Irremovable Parish Priests may be deprived of their Parishes.*

411. *Observation.*—What is said in this paragraph applies not only to parish priests, but to[135] all beneficiaries inferior to bishops. Again, the contents of this paragraph are not *directly* applicable to the United States, as there are no beneficiaries or parish priests proper in this country. We say, "directly"; because our pastors, at least in the larger cities, are generally *de facto quasi-inamovibiles.* The rules, therefore, here laid down will serve to show when pastors, with us, *ought* to be removed from their parishes.

412. The offence for which a parish priest may be removed from his parish should, in general, be a, 1, *crimen grave*, nay, a *culpa*[136] *gravior;* the reason is that *privatio parochiae* is one of the *poenae graviores;* 2, parish priests are dismissed, *ipso jure*, only for offences *expressly* stated in law; it is[137] a controverted question whether this holds true also of dismissal *per*[138] *sententiam judicis.*

[131] Sess. xiv., cap. i.
[132] Cfr. Bouix, De Judic., vol. ii., pp. 341, 354.
[133] Bouix, l. c., p. 367.
[134] Ib., p. 364.
[135] Ib., p. 397.
[136] Craiss., n. 556.
[137] Ib.
[138] Reiff., lib. iii., tit. v., n. 370, 368, 369.

413. We ask: Are parish priests obliged to give up their parishes, before judgment is given, in cases where the penalty of dismissal is laid down in law? Dismissal, as decreed in law, is imposed [139] in two ways: 1. *Ipso facto* or *ipso jure;* in this case no *condemnatory* sentence is required, the penalty being inflicted by the law itself.[140] As a rule, however, a *declaratory* sentence is necessary, and, consequently, parish priests are not, generally speaking, bound in conscience to lay down their office before their guilt has been [141] *judicially declared.* Nevertheless, the sentence in this case is *retroactive—i.e.*, takes effect from the time [142] the crime was committed, not merely from the time sentence was pronounced. 2. *Per sententiam;* in this case a *condemnatory* [143] sentence is indispensable—*i.e.*, the guilty parish priest is to be actually sentenced to dismissal from his parish. Such sentence takes effect only from the moment it is [144] pronounced.

414. *Offences for which Parish Priests are deprived, ipso jure, of their Parishes.*—They are chiefly: [145] 1. Heresy. 2. Falsification of apostolic letters. 3. Assassination; by assassins we here mean not only those who commit the deed, being hired to do so, but also those who hire [146] them. 4. Killing or striking a cardinal or bishop.[147] 5. Procuring abortion. 6. Sodomy. 7. Simony; the penalty of dismissal from parish is incurred only by *simonia realis, confidentialis, et mixta,* not by *simonia mentalis.*[148] 8. Duel, even when death does not ensue. 9. Usurpation of the property of any church or *locus* [149] *pius.* 10. If a parish priest, without having leave from the Holy See, alienates, except in cases permitted by law, property belonging to his parish. 11. If he,

[139] Craiss., n. 557.
[140] Reiff., l. c., n. 368.
[141] Ib.
[142] Bouix, De Paroch., pp. 368, 369.
[143] Craiss., n. 557.
[144] Reiff., l. c., n. 369.
[145] Cfr. our Notes, p. 119.
[146] Craiss., n. 558.
[147] Bouix, De Paroch., p. 374.
[148] Ib, p. 374.
[149] Soglia, vol. ii., p. 204.

having been improperly promoted to sacred orders—*v.g.*, *per saltum*, without [150] a canonical *titulus*, or without letters dimissory, or before the legitimate age—presume to exercise the orders thus received. 12. For omitting to receive orders within a year. Thus, if a person not yet ordained obtains a parish, he is bound, under pain of losing his parish *ipso jure*, to receive the order of priesthood within one year from the [151] time of his appointment. This penalty, however, is not incurred if the appointee was lawfully hindered from receiving orders within the prescribed time—*v.g.*, by sickness, etc.

415. *Offences to which the Penalty of Dismissal from Parish is Annexed, only Post Judicis Sententiam.*—They are, chiefly: 1. Neglect to wear a becoming [152] clerical dress. 2. Non-residence [153] in the parish. 3. Usury, drunkenness, gambling, murder, perjury, theft, and the like. 4. *Insordescentia in censura.*—A parish priest who falls into excommunication or suspension cannot [154] be dismissed simply because he is under censure, but only when, with *obdurate heart*, he remains for a year under censure, and thus, so to say, contemns the authority of the Church. 5. If a parish priest has become irregular, because of having committed an offence punishable with dismissal.[155] 6. Concubinage and simple fornication. It is a mooted question whether, *de jure communi*, a bishop can, *without previously warning* or suspending the guilty parish priest, proceed *immediately* to inflict dismissal for repeated acts of fornication,[156] or even for one act only. We say, *de jure communi;* for, where custom sanctions it, dismissal in such case may undoubtedly be inflicted [157] *at once.*[158] Again, when there is proof merely of fami-

[150] Bouix, l. c., p. 372.
[151] Bouix, De Paroch., pp. 370, 371.
[152] Conc. Trid., sess. xiv., cap. vi., d. R.
[153] Soglia, vol. ii., p. 204.
[154] Bouix, l. c., pp. 372, 373.
[155] Ib., p. 373.
[156] Ib., pp. 375, 386.
[157] Ib., p. 393.
[158] Cfr. Conc. Trid., sess. xxv., cap. xiv., d. R., and sess. xxi., cap. vi., d. R.

liarity with a woman of bad fame, but not of carnal acts, the bishop cannot proceed to dismissal except after[159] he has previously warned or suspended the guilty parish priest.[160] 7. Finally, if a parish priest should rashly cause to be summoned, either directly or indirectly, before a lay tribunal, another ecclesiastic,[161] concerning matters that pertain to the forum of the Church, such parish priest may be deprived[162] of his parish.

416. *Observation.*—What has been said in this paragraph holds true, not[163] only of *privatio parochiae*, but also of *depositio* proper. Owing to the changed relations between Church and state at the present day, *degradatio* can scarcely take place.[164]

§ 3. *Offices whose Incumbents are Amovibiles ad Nutum—Movableness of Pastors in the United States.*

417. The following ecclesiastical officeholders chiefly are *amovibiles ad*[165] *nutum:* 1. Vicars-general all over the world. 2. The rectors of *parochiae succursales* in France; these rectors, though removable *ad nutum*, are canonical parish priests. 3. Rural deans in the United States. 4. All[166] pastors in this country, save perhaps one in New Orleans.

418. The power of removing pastors, *ad nutum*, in this country is exercised by our bishops *ex recepta in his provinciis*[167] *disciplina.* That our discipline in this respect is exceptional no one can deny; for, as we saw, parish priests, according to the general discipline of the Church at the present day, are, as a rule,[168] irremovable. Our discipline, though exceptional, is by no means unlawful, for it has not been improbated by the Holy See. Nor is it,

[159] Bouix, p. 386.
[160] Craiss., n. 559.
[161] Ib. (9°).
[162] Our Notes, p. 386.
[163] Bouix, p. 364.
[164] Phillips, Lehrb., p. 398.
[165] Craiss., n. 560, 562.
[166] Conc. Pl. Balt. II., n. 125; cfr. ib., n. 108.
[167] Ib., n. 125.
[168] Phillips, Lehrb., p. 342.

of itself, opposed to the good of religion[169] in this country. Our condition, in fact, but resembles that[170] of the first ages of the Church; then, too, the bishop was the sole *parochus* of the diocese; his priests were, so to say, only his assistants.

419. We ask: Can pastors *ad nutum revocabiles* be removed *sine causa?* It is the common opinion[171] of canonists that pastors and other officials, *amovibiles ad nutum*,[172] can, as a rule, be validly[173] removed *sine causa*. We say, 1, *as a rule;* for there are several cases in which these ecclesiastics cannot be even[174] validly removed, except for sufficient reasons. Thus, removals *sine causa* are invalid chiefly: 1. When they are prompted by open or lawfully presumed hatred. 2. If they injure the reputation of the person removed—*v.g.*, if a pastor is changed to an inferior parish. 3. In case they redound to the detriment especially of the congregation. 4. Where bishops are not accustomed to remove pastors without cause.[175] We say, 2, *validly;* for in no case can a bishop *lawfully* and without committing sin remove pastors, except for sufficient reasons.[176]

420. *Removal of Pastors in the United States.*—The fathers of the Second Plenary Council of Baltimore[177] say: "Monemus autem et hortamur, ne episcopi hoc jure suo (scil. quemvis sacerdotem numere suo privandi aut alio transferendi) nisi *graves ob causas* et habita meritorum ratione uti velint." Again, bishops in this country do not, as a rule, remove pastors without sufficient reasons. Hence, in case a pastor is removed *sine causa*, without at the same time being placed over another congregation of equal importance, he

[169] Cfr. Bouix, De Paroch., p. 207 seq.
[170] Craiss., n. 561.
[171] Ib., n. 563.
[172] Cfr. Bouix, De Paroch., pp. 408, 409.
[173] Reiff., lib. iii., tit. v., n. 43–45.
[174] Cfr. Ferraris, V. Beneficium, art. i., n. 35, 36.
[175] Bouix, l. c., pp. 403, 404, 411, 413.
[176] Craiss., n. 564; cfr. Phillips, Lehrb., pp. 166, 167.
[177] N. 125.

may have recourse to the superior for redress,[178] since such removal would seem to be not only illicit, but invalid. Removable pastors do not lose their parishes by the death of the bishop.[179] The jurisdiction of vicars-general[180] lapses, *ipso facto*, as soon as the episcopal see becomes vacant; no matter whether the vacancy is caused by the death, resignation, removal, etc., of the[181] bishop.

[178] Cfr. Bouix, l. c., p. 113. [179] Ib., p. 399. [180] Our Notes, p. 69.
[181] Craiss., n. 566.

CHAPTER X.

OF RESTRICTIONS UPON JURISDICTION—EXEMPTIONS OF RELIGIOUS COMMUNITIES FROM THE JURISDICTION OF BISHOPS AND PARISH PRIESTS.

421. The *jurisdictio* of bishops, parish priests, etc., may be *suspended* by censures and irregularities. Again, it may be *restricted* either as to persons or matters: as to persons, it is limited by exemptions; as to matters, by[1] reservations. At present we shall merely dwell upon exemptions. Exemption is a "privilegium, quo[2] persona aut locus a jurisdictione episcoporum subtrahuntur, ac summo Pontifici immediate subjiciuntur."[3] Various Catholic writers,[4] hostile to the Holy See, have written in opposition to the exemptions granted to religious communities. Febronius, who followed in the wake of these authors, asserted that exemptions, as vested in religious communities, were, 1, prejudicial to the authority of bishops; 2, injurious to the observance of monastic discipline; 3, nay, even detrimental to the interests of secular rulers. The defenders of Gallicanism, as a matter of course, chimed in with this outcry against exemptions.[5]

422. On the other hand, good Catholic writers—*v.g.*, St. Francis of Sales, St. Bernard—complain also, not indeed of exemptions themselves,[6] but of the various abuses occasioned by them. It were, in fact, vain to deny that no small num-

[1] Craiss., n. 567.
[2] Ferraris, V. Regulares, art. ii., n. 1.
[3] Cfr. Phillips, Lehrb., § 149, p. 292.
[4] Ap. Bouix, De Jure Regular., vol. ii., p. 86. Parisiis, 1867.
[5] Bouix, l. c., p. 86.
[6] Craiss., n. 569, 570, 571.

ber of evils were attendant on them; they had become too numerous and extensive, and were consequently modified and reduced in number by the Council of Trent[7] and by various Pontiffs.[8] Having premised this, we establish the following proposition: *Exemptions, apart from abuses, are lawful, nay, very useful and just.*

423.—I. *Exemptions are Lawful.*—This is proved, 1, from their antiquity.[9] Thus, in the year 390, St. Epiphanius, Bishop of Salamina, having come to Jerusalem on a pilgrimage, and remaining at a certain monastery in Bethlehem, conferred the order of priesthood upon Paulinus, one of the monks. When John, Bishop of Jerusalem, complained of this act as an infringement of his authority, St. Epiphanius replied: "Nihil tibi injuriae fecimus; in *monasterio* ordinavimus, et non *in paroecia* [dioecesi],[10] *quae tibi subdita sit.*" Hence, even at this early period, the monastery in question was exempted from the authority of the ordinary. In the Roman council held in the year 601, St. Gregory the Great exempted monasteries in general from the jurisdiction of bishops. The decree reads: "Quia in pluribus monasteriis multa a praesulibus praejudicia monachos pertulisse cognoscimus, prohibemus ut nullus episcoporum ultra praesumat de rebus monasteriorum minuere; neque audeat quamlibet potestatem habere imperandi, nec aliquam ordinationem faciendi, nisi ab abbate loci fuerit rogatus."[11] 2. Exemptions, secondly, are lawful, because they emanate from the legitimate exercise of competent authority vested in the Roman Pontiffs. No Catholic can doubt for a moment that Popes *can* exempt certain persons from the jurisdiction of inferior prelates.[12]

424.—II. *Exemptions, moreover, are Useful and Just.*—For religious communities, as at present constituted, are, as a

[7] Sess. xxiv., cap. xi., d. R., et alibi.
[8] Soglia, vol. ii., p. 55.
[9] Craiss., n. 572.
[10] Bouix, De Jure Regular., vol. ii., pp. 99, 100.
[11] Ib.
[12] Craiss., n. 573; cfr. Soglia, vol. i., p. 243.

rule, governed each by a general[13] superior. By means of this unity of government the various houses of a congregation, though spread through different dioceses and governed by local or provincial superiors, ultimately depend upon a general chapter or superior; the community is thus prevented from being divided into innumerable, insignificant houses independent one of another. That this form of government is beneficial to religious congregations, and conducive to the better observance of the monastic discipline, no one can doubt. Now, this unity of government could not obtain in case religious communities were subject to bishops; for each bishop would become, so to say, the supreme and independent superior of the communities of his diocese.

425. There is some doubt as to the origin of exemptions. According to some writers, they are coeval[14] with monasticism itself; according to others, they are of later date,[15] and were not possessed by any religious community in the beginning[16] of monasticism.[17]

426. *Nature and Extent of the Exemptions of Religious Communities from the Authority of Bishops.*—Religious at the present day are not, by virtue of their exemptions, released from *all* subjection to episcopal jurisdiction.[18] For exemptions, as was seen, were considerably diminished by the *jus commune* previous to the Council of Trent, by the Council of Trent itself, and subsequently by various Pontifical enactments. Hence, bishops are now vested, in various cases, with *jurisdictio*[19] *ordinaria* or *delegata* over religious orders. Thus, regulars, notwithstanding their exemptions,

[13] Bouix, l. c., pp. 110, 113.

[14] Ib., p. 103 seq.

[15] Thomassinus, Vetuset Nova Eccl. Disciplina, pars. i., lib. iii., cap. xxvi., p. 696 seq. Lucae, 1728.

[16] Bouvier, De Decal., cap. ii., p. 267, vol. v., edit. 1844.

[17] Cfr. Reiff., lib. i., tit. xxxi., n. 107.

[18] Craiss., n. 576, 577.

[19] Ferraris, V. Regulares, art. ii., n. 2, 3.

fall under the jurisdiction of bishops "in iis quae respiciunt curam animarum, aut sacramentorum administrationem."[20] Again, regulars are subject to "saltem *delegatae* episcoporum jurisdictioni, quoad domorum religiosarum fundationes, suorum alumnorum ordinationes, Verbi Dei praedicationem, SS. Sacramenti publicam expositionem, librorum approbationem, confraternitatum erectionem, monialium confessiones, et quoad observanda et vitanda in celebratione Missae."[21]

427. The chief cases in which religious communities do not fall under the authority of bishops[22] are thus enumerated by Cardinal Soglia:[23] "In reliquis autem quae ad disciplinam domesticam, observantiam regularum et votorum, modum vivendi, officia, promotiones, coercitiones religiosorum, pertinent, nequit episcopus sese immiscere."

428. *Are religious communities in the United States exempted from the authority of bishops?* They are, so[24] far as exempt orders of men are concerned—*v.g.*, the Jesuits, Dominicans, Benedictines, Capuchins, Carthusians, etc.; this is clearly implied in these words of the fathers of Baltimore: "Dum ab Episcopis serventur regularium exemptiones in iis quae ad regimen internum communitatis, spectant.[25] . . ." We say, exempt orders of *men;* for nuns or sisters in this country have, as a rule,[26] but simple vows,[27] are not, in consequence, true religious, at least strictly speaking, of those orders whose rules they follow, and, therefore,[28] do not come within the category of exempted religious communities;[29] hence, they fall under the jurisdic-

[20] Conc. Pl. Balt. II., n. 410; cfr. our Notes, pp. 328, 329.
[21] Conc. Pl. Balt. II., n. 411, 412.
[22] Cfr. Phillips, Kirchenr., vol. vii., pp. 903–1027. [23] Vol. ii., p. 57.
[24] Cfr. Kenrick, Mor., tract. iv.; app. ii., n. 1–10; tract. viii., n. 50 seq.
[25] Conc. Pl. Balt. II., n. 413; cfr. ib. app. 21, p. 322.
[26] Decret. S. C. Episc., 3 Sept., 1864, ad Archiep. Balt.
[27] Cfr. Conc. Pl. Balt. II., n. 419, 420. [28] Cfr. Craiss., n. 609.
[29] Cfr. Bouix, De Jure Regular., vol. ii., p. 132.

tion of bishops. This applies directly to Benedictine and Dominican Sisters and the like, and, indirectly, also to Sisters[30] of Charity and similar congregations. There is no doubt that, generally speaking, religious communities still possess the privileges of exemptions all over the world.[31]

429. *How Religious Communities are Exempted from the Authority of Parish Priests in whose Parishes Monasteries or Convents are situate.—Rule I.*—In whatever matters religious communities are exempt from the jurisdiction of bishops, they are, *à fortiori*, free[32] from the authority of parish priests.

430. *Rule II.*—By parochial rights (*jura parochialia*), as vested, at present, in *canonical parish priests*, we mean chiefly the right of administering baptism, Extreme Unction, and the Viaticum;[33] the faithful, moreover, are obliged to satisfy the precept of paschal communion in their parish church, and to contract marriage *coram proprio*[34] *parocho*. Regulars, therefore, cannot administer any of these sacraments without the permission of the parish priest or ordinary of the diocese.[35] Several particulars, however, are to be noticed in regard to this point. 1. Regulars approved for confessions can hear lay people also during the paschal[36] season. They may also hear the sick at any time; but, having done so, they must inform the parish priest of the fact, so as to enable him to administer the Viaticum and Extreme Unction. 2. They may,[37] in like manner, distribute Holy Communion in their churches, except on Easter day itself. 3. Formerly the faithful were[38] bound to hear Mass on

[30] Cfr. our Notes, pp. 329, 330.
[31] Bouix, l. c., p. 121.
[32] Bouvier, Tract. de Decalogo, vol. v., p. 269. Paris, 1844.
[33] Ferraris, V. Parochia, n. 22.
[34] Ib.
[35] Bouix, De Paroch., p. 442 seq.
[36] Cfr. Bened. XIV., De Syn., lib. ix., c. xvi., n. 3.
[37] Cfr. Bouix, l. c., p. 448.
[38] Cfr. ib., p. 449.

Sundays and holidays *in the parish church.*[39] This obligation has lapsed. Bishops and pastors, at present, may indeed *exhort*, but cannot *compel*, the faithful to attend the parochial Mass.[40]

431. *Rule III.*—Not only professed religious, but also novices and postulants, are exempt from the authority of parish priests; nay, according to the Council of Trent,[41] even servants of monasteries may receive paschal communion, the Viaticum, and Extreme Unction in the community, church, or chapel, provided they live[42] in the monastery; for if they merely work there during the day, going out at night, or if they live in houses[43] situate indeed *intra ambitum monasterii*, but detached from it, they must receive the above sacraments from the parish priest. Can students at colleges in charge of regulars, and girls in academies conducted by nuns, receive the paschal communion, Extreme Unction, and the Viaticum from the chaplain of the respective institution, or are they bound to receive these sacraments from the parish priest of the place? The question[44] is controverted. It is certain, however, that the bishop may, by special enactment,[45] exempt these youths and girls from the obligation of receiving these sacraments from the parish priest of the place where the college or academy is situate; in fact, bishops generally do so at present, not only with regard to[46] boys and girls educated respectively by regulars and nuns, strictly speaking, but also with regard to students brought up in colleges conducted by secular priests, and girls educated by nuns or sisters having but simple vows.

432. What has been thus far said applies chiefly to European countries, where the *jura parochialia* still obtain, but

[39] Cfr. Bouix, De Jur. Regular., vol. ii., p. 196.
[40] Cfr. Ferraris, V. Parochia, n. 23.
[41] Sess. xxiv., cap. xi., d. R.
[42] Craiss., n. 611.
[43] Bouix, l. c., p. 200.
[44] Ib., l. c., pp. 204–209.
[45] Craiss., n. 612.
[46] Bouix, l. c., p. 209.

not, at least properly speaking, to the United States; for we have no canonical parish priests. Besides, regulars in this country usually have themselves charge of parishes, and therefore have the same *jura quasi-parochialia* as secular pastors.

CHAPTER XI.

ON THE RIGHTS AND DUTIES OF THOSE WHO ARE VESTED WITH ECCLESIASTICAL JURISDICTION.

433. Those who have *jurisdictio ecclesiastica* are by that very fact entitled to certain rights and prerogatives—viz., to reverence and obedience from those under their charge. Now, these rights have corresponding duties; of these some are *positive*, consisting of certain actions to be performed—*v.g.*, the duty of residence; others *negative*, having reference to the avoiding of excesses.[1] At present we shall only speak, 1, of the rights of ecclesiastical superiors in general; 2, of their negative duties—*i.e.*, of the excesses to be avoided by them in the exercise of their authority.

ART. I.

Rights of Ecclesiastical Superiors in General (De Obedientia et Reverentia).

434. The right to obedience and[2] reverence on the part of subordinates may be said to constitute the chief prerogative of ecclesiastical superiors. Ecclesiastical obedience (*obedientia canonica*) in general consists in three things:[3]

435.—1. In this: that an inferior should carry out the directions of his superiors, and, therefore,[4] submit to their authority in matters pertaining to their jurisdiction. This

[1] Craiss., n. 621. [2] Ib., n. 622. [3] Reiff., lib. i., tit. xxxiii., n. 15.
[4] Phillips, Kirchenr., vol. ii., p. 174. Ratisbon, 1857.

every priest promises in his ordination.[5] Those, moreover, who are canonically appointed parish priests[6] must also take the oath of canonical obedience. Now, we ask: What is, especially in the United States, the force of the promise of obedience given by every priest in his ordination? Chiefly this: 1, priests are *bound* not to give up their missions or congregations[7] without the bishop's permission; 2, they are *exhorted* "ut non detrectent vacare cuilibet missioni ab episcopo designatae."[8] Obedience is due the superior even when it is doubtful whether his orders are just; because the presumption is in his favor. But who is to be obeyed in a conflict of authorities—*i.e.*, when two ecclesiastical superiors, in matters falling under their jurisdiction, give contrary orders? The general rule is that obedience[9] is due to the higher superior. Nor is this opposed to the principle that an ecclesiastic must obey his bishop rather than the metropolitan;[10] for, in the conflict of authority, it is taken for granted that each of the superiors in question has a right to command. Now, the metropolitan has no power over the ecclesiastics of suffragans, except during the visitation and on appeal.[11] On the same principle, a monk must obey his prelate rather than the bishop; in like manner, when the bishop orders something which is contrary to the *jus commune* of the Church, the law is to be obeyed, and not the bishop.[12]

436.—2. Obedience consists, secondly, in the submission of the inferior to the *judicial* authority (*jurisdictio contentiosa*) of his superiors.[13]

[5] Craiss., n. 622; cfr. Pontificale Rom., pars. i., p. 77. Mechlin., 1862.

[6] Phillips, l. c., p. 200.

[7] Cfr. Instructio S. C. Prop., 28 Junii, 1830, ap. Conc. Balt., pp. 64, 65.

[8] This whole matter is well explained in the *Instructio* of the Propaganda on the Decrees of the First Prov. C. of Baltimore.

[9] Reiff., l. c., n. 22. [10] Phillips, l. c., p. 181. [11] Craiss., n. 623.

[12] Ib., n. 622. [13] Reiff., l. c., n. 20.

437.—3. Obedience consists, thirdly, in the *reverence* due superiors.[14] By *reverentia* we mean the external marks of respect which inferiors should show their[15] superiors—*v.g.*, by rising in their presence, giving them the first place, and the like. Of this *reverentia* we shall speak in the following article.

Art. II.

Canonical Precedence—Majoritas and Praecedentia.

438. The respect (*reverentia*) due superiors is shown chiefly by the precedence which is given them, especially in processions, funerals, synods, signing documents, and the like.[16]

439. *Rules of Precedence.*—Of these some are general, others special. I. *General Rules of Precedence.*—Precedence in general is regulated[17] by five causes: 1. *Ex praerogativa ordinis;* thus, a deacon, even though younger as to ordination, ranks higher[18] than a subdeacon; a priest higher than a deacon. 2. *Praerogativa consecrationis;* thus, a consecrated[19] bishop precedes a bishop elect. 3. *Ratione jurisdictionis et dignitatis;* hence,[20] an archbishop, even though younger as to consecration, takes precedence of a bishop. 4. *Ratione antiquitatis;* thus, precedence among bishops[21] themselves is regulated by the time of their consecration; among priests, by the time of their ordination. This rule applies only to ecclesiastics in the same *ordo;* it admits of exceptions. 5. *Praerogativa ordinantis;* thus, an ecclesiastic ordained by the Pope[22] precedes others of the same *ordo* and *dignitas* with himself, even though he was ordained after them.

[14] Reiff., l. c., n. 16.
[15] Cfr. Phillips, l. c., p. 174.
[16] Phillips, l. c., p. 155.
[17] Reiff., l. c., n. 3.
[18] Ib., n. 4.
[19] Ib., n. 5.
[20] Craiss., n. 626.
[21] Phillips, l. c., pp. 158–162.
[22] Phillips, l. c., p. 159.

440. To these five rules, generally given by canonists, we may add: 1. "Ex privilegio insignium," mitred abbots[23] take precedence over others not entitled to wear the mitre. 2. In sacred functions and public[24] prayers those who are in sacred vestments precede others (even though they be superior in rank) who are in their ordinary dress. 3. In his own diocese a bishop takes precedence of other bishops, nay, even of archbishops; not, however, of his metropolitan.[25] As a matter of courtesy, however, the bishop of the diocese may give precedence to strange bishops who are in his diocese. 4. "Praerogativa loci,"[26] by which the Archbishop of Baltimore takes precedence of all other archbishops in the United States in councils[27] and the like.

441.—II. *Special Rules of Precedence.*—1. Vicars-general, as a rule, should have the first place after the bishop, and take precedence of canons and dignitaries, both in the presence and absence[28] of the bishop, provided, however, they are present in their official capacity—*i.e.*, as vicars-general.[29] In the United States vicars-general also take[30] precedence of all other priests or dignitaries of the diocese. The vicar-general of the metropolitan[31] takes precedence even of the bishops of the province. Administrators of dioceses, *sede vacante*, in this country, being quasi-capitular vicars, precede in rank all[32] the other clergymen of the respective dioceses. 2. Next in rank are rural deans, then come pastors, and, finally,[33] assistant priests and other ecclesiastics. 3. Regulars come last, and should always, even in their own[34] churches, give precedence to the secular clergy. Precedence among priests in the United States is regulated by

[23] Craiss., n. 626. [24] Ib., n. 627. [25] Phillips, Lehrb., p. 290.
[26] Cfr. Conc. Pl. Balt. II., p. 343. [27] Our Notes, p. 28.
[28] Bened. XIV., De Syn., lib. iii., cap. x., n. 1, 2.
[29] Ferraris, V. Vicar.-gen. Novae Addit., n. 2. [30] Conc. Pl. Balt. II., n 72.
[31] Phillips, Kirchenr., vol. ii., p. 167. [32] Cfr. Craiss., n. 630.
[33] Phillips, l. c., p. 167. [34] Ferraris, V. Praecedentia, n. 9.

the time of their ordination or of their admission into the diocese.

Art. III.

Of Excesses Committed by Bishops or Prelates in the Exercise of their Authority.

442. *Chief Abuses of Jurisdiction.*—By abuses of jurisdiction we mean, in general, the improper use of it. At present we[35] shall speak only of those abuses of power that violate, at least to some extent, the rights of others.[35] A superior may abuse his authority chiefly: 1. By usurping jurisdiction over persons not under his authority—*v.g.*, over the subjects of[36] another bishop. 2. By extending his power *ad materiam alienam*—*v.g.*, if a parish priest should attempt to exercise the *jurisdictio fori externi* even over his own[37] parishioners. 3. By bringing before his tribunal, in cases not allowed by canon law, a cause which, in the first instance, should have been tried by an inferior judge. 4. By unjustly and without cause taking away or restricting the rights of subordinates. 5. By imposing upon inferiors a new burden without sufficient reasons—*v.g.*, by not observing the canonical mode of procedure in inflicting[38] censures, in trials, and the like. 6. By appointing unworthy persons[39] to parishes. 7. By unduly restricting the privileges of exempt persons, especially of regulars.[40]

443. *Canonical Remedies by which Inferiors may protect themselves against Abuses of Authority committed by Prelates.*—These remedies are chiefly: 1. *Respectful remonstrances* (*humilis supplicatio*) addressed to the superior himself who is guilty[41] of excesses. Thus, the Roman laws allowed of recourse "a principe male informato ad principem melius in-

[35] Craiss., n. 643. [36] Ib. [37] Ib. [38] Ib. [39] Reiff., lib. v., tit. xxxi., n. 5. [40] Ib., n. 6, 10. [41] Craiss., n. 644.

formatum," or, as the proverb has it, "ab Alexandro dormiente ad vigilantem." St. Bernard[42] tells us that the "apostolica sedes hoc habet praecipuum ut non pigeat retractare quod a se forte deprehenderit fraude elicitum." 2. *Appeals* (*appellatio*).—The right of appeal—*i.e.*, of removing a cause from an inferior to a superior judge or court for re-examination—is expressly[43] granted by innumerable canons, and is, according to some,[44] founded in the law of nature. 3. *Complaints* (*querimonia, appellatio extra-judicialis*) addressed to a superior against extra-judicial acts or grievances of inferior judges. Appeals proper, as above explained, presuppose[45] *regular trials*. Hence, recourse to the superior against injuries inflicted without regular trials—*v.g.*, censures *ex informata conscientia*—can be called appeal only in a broad sense. Thus, recourse to the Holy See by priests in the United States, against censures inflicted by bishops *ex informata conscientia*, is not, strictly speaking, *appellatio*, but only *querimonia* or *appellatio extra-judicialis*. There[46] can be no doubt that the "appellatio extra-judicialis" is lawful, nay, of great practical consequence, especially in the United States, where regular canonical trials, even as prescribed by the Second Plenary Council of Baltimore,[47] are of rare[48] occurrence.

444. *Q.* In what cases can appeals be made?

A. Generally speaking, it is allowed to appeal, except where canon law[49] *expressly* prohibits it, against *any gravamen*, whether judicial or extra-judicial.[50] It is even lawful to appeal against *future* or impending *extra-judicial* grievances, even though not yet threatened; also against *threatened judicial* injuries.[51] All appeals, whether judicial or extra-

[42] Epist. clxx. [43] Craiss., l. c. [44] Bouix, De Judic., vol. ii., p. 247.
[45] Cfr. Soglia, vol. ii., § 226. [46] Craiss., l. c.
[47] N. 77. [48] Cfr. Bouix, l. c., p. 246.
[49] Craiss., n. 645. [50] Reiff., lib. ii., tit. xxviii., n. 32.
[51] Cfr. Bouix, l. c., p. 252.

judicial, must be made within ten days[52] from the moment sentence is[53] pronounced, when the parties are present; or from the time notice is received of the sentence or grievance, when the parties are absent.[54]

445. *Cases which admit of no Appeal.*—We said above, *except where canon law expressly prohibits appeals.* Now, when are appeals expressly prohibited by canon law? Chiefly in these cases: 1. There is no appeal against sentences of bishops,[55] pronounced *ex informata*[56] *conscientia.* Recourse, however, to the Holy See is here, as in every other case,[57] permitted. This recourse, as was seen above, does not constitute an appeal, except in a broad sense.

446.—2. The censures of excommunication, suspension, and interdict, when inflicted *before* the appeal is interposed, do not allow of appeals *quoad effectum suspensivum*, but only *quoad effectum devolutivum.* Now, appeals *in suspensivo* are those which cause the execution of the censure to be suspended or deferred until the superior to whom the case is appealed has given his decision. Appeals *in devolutivo* do not suspend censures pending the appeal.[58] If, however, the appeal is made *before* the censure is imposed, the effect[59] of the censure is thereby suspended. Thus, let us suppose a bishop to inflict a censure conditionally—*v.g.*, by saying that such or such a priest will be suspended unless he complies with certain injunctions; if the priest, meanwhile, appeals, and refuses to obey, the bishop cannot proceed to impose the censure, his power being suspended by the appeal.

447.—3. In causes relative to visitation and correction of morals, various kinds of appeals may be[60] made. Thus, a person may appeal, 1, against the law itself that is applied to

[52] Cfr. Bouix, pp. 281–283.
[53] Ferraris, V. Appellatio, art. vii., n. 5.
[54] Soglia, l. c., p. 525.
[55] Craiss., n. 647.
[56] Cfr. Conc. Trid., sess. xiv., cap. i., d. R.
[57] Bouix, l. c., p. 252.
[58] Ib., p. 254.
[59] Ib., p. 255.
[60] Ib., p. 258.

him by the bishop; 2, or against the extra-judicial action of the prelate; 3, against the definitive judgment pronounced judicially by the bishop. Now, an appeal against the law itself is inadmissible, unless the law is either, 1, unjust, as may be the case with *particular* laws—*v.g.*, statutes of a diocese, decrees of provincial or national councils; or, 2, ceases to bind by reason of grave[61] inconvenience or peculiar circumstances. Again, appeals *in devolutivo*, but not *in suspensivo*, are admissible against extra-judicial acts of the bishop and against his final judicial sentence, even in matters relating to visitation and correction of morals. Appeals against diocesan statutes have also *effectum devolutivum* only.[62]

448.—4. No appeal is permitted against a sentence pronounced upon a person guilty of *notorious crimes* (*in causis notoriis*), except in case[63] these crimes can be somewhat defended—*v.g.*, if a person, having publicly killed another, alleges self-defence as an excuse.[64] 5. Appeals *in devolutivo* only lie against regulations of bishops relative to the *cura animarum*, the administration of the sacraments, divine worship, and those things which are to be observed or avoided in the celebration of the[65] Mass.

449.—6. Appeals are allowed, not only in matters of greater importance (*in causis majoribus*), but also in those of little consequence (*in causis levioribus*). Hence, if a[66] bishop, whether judicially or extra-judicially, inflicts, by word or action, an injustice, however slight, the ecclesiastic so wronged may appeal to the metropolitan, who is bound to admit the appeal. As a rule, this appeal suspends the effect of the episcopal injunction. Bishops cannot proceed "ex informata conscientia" *in causis levioribus*, such informal proceedings being allowed only in *causis gravissimis*. 7. The

[61] Bouix, l. c., p. 259.
[62] Bened. XIV., De Syn., lib. xiii., cap. v., n. 12.
[63] Bouix, l. c., p. 262.
[64] Ferraris, V. Appellatio, art. iv., n. 57.
[65] Bened. XIV., Bulla, Ad militantis Ecclesiae, § 8, 9.
[66] Bouix, l. c., p. 262.

phrase, *omni appellatione remota*, sometimes used when[67] the Pope commits a case to some one, does not preclude appeals *in devolutivo*, but only *in suspensivo; à fortiori*, this clause does not prohibit remonstrances and other remedies.

450.—*Mode of Appealing.—Rule I.*—All persons, as a rule,[68] who have serious reasons for believing themselves injured have a right to appeal their case. *Rule II.*—Generally speaking, it is allowed to appeal from *any*[69] judge whatever. We say, *generally speaking;* the exceptions are: 1. No appeal lies from the sentence of the Pope even to an oecumenical council, nor from an oecumenical council; for both of these tribunals are ultimate and supreme, having no superior. Appellants to a future oecumenical council incur, *ipso facto*, excommunication, reserved, *speciali modo*, to the Holy See even[70] at present. 2. There is no appeal from the decisions of the entire College of Cardinals or of the Congregationes Romanae,[71] nor from the final judgments of the[72] Rota Romana. 3. Nor from the decision of arbitrators (*arbitri compromissarii*) freely chosen by the contending parties.[73]

451. *Rule III.*—As a rule, the appellant must interpose his appeal *in the presence*[74] of the judge "a quo appellatur"; for the judge *a quo* (appellatur) must be notified of the appeal, so that he may not proceed any farther in the case.[75]

452. *Rule IV.*—Appeals, except when made to the Pope, must be made from the inferior judge to the *immediate* superior, but not, "eo praetermisso," to the *mediate* superior.[76] Hence, 1, appeals from rural deans, or other judges subject to bishops, must be made to the bishop or his vicar-general, *sede plena;* to the capitular[77] vicar, with us administrator, *sede vacante*. 2. From the bishop or his vicar-general, and,

[67] Bouix, l. c., p. 265. [68] Ib., p. 248. [69] Ib., p. 267.
[70] Const. Apost. Sedis. [71] Craiss., n. 658. [72] Bouix, l. c., p. 268.
[73] Ib. [74] Ib. [75] Schmalzgr. in tit. xxviii., lib. ii., n. 42.
[76] Bouix, l. c., p. 270. [77] Ib., p. 271.

sede vacante, from the chapter, vicar-capitular, or administrator to the archbishop. 3. From the archbishop successively to the primate, patriarch, and Pope. 4. No appeal lies from the vicar-general to the bishop, nor from the Roman Congregations to the Pontiff. 5. Appeals from a *delegatus* must be made to the *delegans*.[78] We said above, *except when made to the Pope;* for not only bishops, but also priests and inferior[79] ecclesiastics, may appeal *directly* to the Holy See; the reason is that the Pope has concurrent jurisdiction with all inferior ordinary judges.[80] This right of appealing directly to the Holy See is thus affirmed by the Vatican Council:[81] "Declaramus eum [Rom. Pontificem] esse judicem supremum fidelium, et in omnibus causis ad examen ecclesiasticum spectantibus, ad *ipsius posse judicium recurri;* Sedis vero Apostolicae, cujus auctoritate major non est, judicium a nemine fore retractandum, neque cuiquam de ejus licere judicare judicio. Quare a recto veritatis tramite aberrant, qui affirmant, licere ab judiciis Romanorum Pontificum ad oecumenicum concilium tanquam ad auctoritatem Romano Pontifice superiorem appellare." Nay, direct appeals to the Holy See are not only lawful, but prevail over and take precedence of all other appeals to inferior tribunals. Thus, if, of the two parties to a suit, one appeals to the Sovereign Pontiff, the other to the immediate superior—*v.g.*, the metropolitan—the suit or case must be brought before the Holy See, provided the party appealing to the Pope notifies the immediate superior of his action.[82]

453. *Rule V.*—Appeals from definitive sentences, if interposed *immediately—i.e.*, when the judge is still on[83] the bench (*incontinenti, stante pede*)—may be made *viva voce* in the words, I appeal, or the like;[84] or, instead of saying these

[78] Bouix, l. c., p. 271. Soglia, vol. i., p. 252.
[80] Leurenius, Forum Eccl., tit. xxviii., lib. ii., qu. 1063.
[81] Sess. iv., c. iii., in fine. [82] Craiss., n. 661.
[83] Bouix, De Judic., vol. ii., p. 274. [84] Soglia, vol. ii., p. 522.

words, the appellant may begin the journey to the superior for the sake of appealing. Thus, the voyage to Rome has, of itself, the effect of an appeal, if undertaken within ten days from the time sentence was pronounced or the grievance inflicted, and provided the *judex a quo* be notified of the proposed journey.[86] But if these appeals are made *post intervallum*, they must be *in writing*.[88] *Rule VI.*—Letters (*libelli dimissorii*, *apostoli*, from ἀπόστολοι, *missi*) from the *judex a quo* to the *judex ad quem*, certifying to the appeal,[87] are, as a rule, necessary, no matter whether the appeal is made against a judicial or extra-judicial grievance.[88] We say, *as a rule;* for, if the *judex a quo* refuses such certificate, the appellant may nevertheless prosecute his appeal.[89] *Rule VII.*—The time fixed by canon law within which appellants must interpose appeals, ask for the *apostoli*, prosecute and terminate their appeal, is named *dies fatales*,[90] *fatalia*. 1. We have already seen *when* appeals should be made. 2. The *apostoli* should be solicited by the appellant and granted by the *judex a quo* within thirty days. 3. One year, and for just reasons two years, are given the appellant to prosecute and terminate his appeal, from extra-judicial as well as judicial grievances.[91]

Art. IV.

On Appeals to the Civil Power against Abuses committed by Ecclesiastical Superiors—De appellatione tanquam ab abusu.

454. The *appellatio ab abusu* consists in having recourse or appealing to the civil power for[92] protection against abuses committed by ecclesiastical superiors in the exercise of their jurisdiction.[93] Now, ecclesiastical superiors may abuse

[85] Craiss., n. 5981.
[86] Bouix, l. c., p. 274.
[87] Ib., p. 276.
[88] Ib., p. 277.
[89] Ib., p. 278.
[90] Soglia, vol. ii., p. 525.
[91] Bouix, l. c., pp. 281–285.
[92] Craiss., n. 666.
[93] Phillips, Lehrb., p. 773.

their authority either by placing a false[94] construction upon laws of the Church, and thus giving an unjust sentence and inflicting an undeserved penalty, or by acting contrary[95] to ecclesiastical law—*v.g.*, by imposing censures without proper trial.

455. *Q.* Is it allowed to appeal to the civil power or seek redress in the civil courts against wrongs inflicted by ecclesiastical superiors?

A. We premise: We speak here only of abuses relative to spiritual and ecclesiastical matters; for that it is lawful to appeal from the ecclesiastical to the civil courts, in matters purely civil and temporal, there can be no doubt.[96] We now answer: Such appeals are, as a rule, not only unlawful, but null and void.[97] For the Church, being a perfect and supreme society, is necessarily the supreme[98] and, therefore, sole and ultimate judge in matters pertaining to her jurisdiction—*i.e.*, in ecclesiastical and spiritual things. The civil[99] power, so far from having any authority over the Church in this respect, is itself subject to her. Persons, therefore, who have reason to believe themselves in any way unjustly treated by their ecclesiastical superiors, can seek redress only *in* the Church herself—namely, by appealing to the proper ecclesiastical superior, and, in the last resort, to the Sovereign Pontiff. The Holy See is the supreme tribunal in the Church; its decisions are unappealable, as is thus stated by the Vatican Council:[100] "Docemus . . . Sedis Apostolicae judicium a nemine fore retractandum, neque cuiquam de ejus licere judicare judicio." In no case, therefore, is it allowed to appeal to civil courts from the decisions of the Holy See. But can it become lawful, under certain circumstances, to have recourse to the civil courts

[94] Phillips, Kirchenr., vol. ii., p. 572.
[95] Soglia, vol. i., p. 342.
[96] Phillips, Kirchenr., vol. ii., p. 573.
[97] Soglia, l. c.
[98] Cfr. Bouix, De Judic., vol. i., p. 93 seq.
[99] Craiss., n. 667.
[100] Sess. iv., cap. iii.; cfr. Syllab., prop. xli.

against injuries inflicted by inferior ecclesiastical judges—*v.g.*, by bishops? Soglia[101] grants that such recourse may, at times, become lawful,[102] when, *e.g.*, the ecclesiastical judge of appeal—*v.g.*, metropolitan—is unwilling or unable to afford relief, and when, moreover, it is morally impossible to recur to the Holy See; the case, therefore, is speculative rather than practical.

456. *Q.* Can priests in the United States have recourse to the civil courts for redress against alleged acts of injustice inflicted on them by bishops?

A. They cannot, in matters *strictly* ecclesiastical, as is evident from this decree: "Quod[103] si ecclesiastica vel religiosa utriusque sexus persona, aliam personam ecclesiasticam vel religiosam utriusque sexus coram civili tribunali temere citaverit de re *juris stricte*[104] *ecclesiastici*, noverit se in censuras a jure latas incidere." The censure, incurred also in the United States,[105] for carrying purely ecclesiastical matters into civil courts, is *excommunicatio latae sententiae*, at

[101] L. c., p. 344.

[102] Of course, this must not be understood, as though, even in the case under consideration, it were allowed to carry the cause itself into the civil court; for, canonists unanimously hold that the civil power cannot, save by concession of the Church, take *any cognizance whatever* of purely ecclesiastical matters. Hence, even in the case referred to, it is lawful to have recourse to civil tribunals only for the purpose of obtaining a new *ecclesiastical* trial or of being enabled to appeal to the higher *ecclesiastical* judge; and even this appeal can take place only where the ecclesiastical superior has notoriously abused his power, and when all other *ecclesiastical* remedies have been vainly tried. Cfr. Phillips, Kirchenr., vol. ii., pp. 571–579; Nat. Alexander, saec. iv., pars. i., pp. 23, 32, pars. ii., pp. 25–40. Paris, 1679.

[103] Conc. Prov. Balt. III., n. 6.

[104] Hence, ecclesiastics or religious bringing before the civil court *causae mixtae—i.e.*, those where the *personae sunt ecclesiasticae sed res de quibus controversia est, temporales aut familiares*—do not incur any censure. This holds especially in non-Catholic countries, where redress can scarcely be obtained outside of civil tribunals. Cfr. Instr. Prop. Ap. Conc. Prov. Balt. ab. ann. 1829–1849, p. 140; cfr. our Notes, p. 386.

[105] Kenrick, Mor. Tract. xxii., n. 7.

present,[106] *speciali modo, Romano Pontifici reservata.*[107] Happily, appeals of this kind are of rare occurrence in these parts; and where priests, unmindful of the laws of the Church, have appealed to the civil courts for redress against alleged injuries received from bishops, these courts have generally recognized and respected the laws of the Church on this head.

[106] Craiss., n. 667.

[107] Const. Apost. Sedis, A.D. 1869, n. 6, 7; ap. Craiss., n. 1637.

PART III.

OF PERSONS PERTAINING TO THE HIERARCHY OF JURISDICTION IN PARTICULAR — i.e., OF ECCLESIASTICS AS VESTED WITH "JURISDICTIO ECCLESIASTICA" IN PARTICULAR.

CHAPTER I.

OF THE SOVEREIGN PONTIFF.

ART. I.

Of the Roman Pontiff in General.

457.—I. The Sovereign Pontiff is named Pope (*Papa*), which means father.[1] This name is at present applied to the Roman Pontiff only, and not, as formerly, to bishops, and even minor ecclesiastics.[2] The Supreme Pontiff is, *jure divino*, head of the entire Church and the centre of its unity, successor of St. Peter, vicar of Christ, father and teacher of all the faithful.[3] II. We have already spoken of the election of the Roman Pontiff, and shall here add only a few words on this point. The Pope cannot elect his successor.[4] Some Popes, it is true, pointed out those whom they thought most worthy of the Pontificate; this, however, was *commendatio*, not *electio*.[5] The Pope may establish the form to be observed in the election of the Supreme Pontiff, for no special form was determined by Christ; but he cannot, even

[1] Craiss., n. 671. [2] Devoti, lib. i., tit. iii., n. 12. [3] Ib., n. 13.
[4] Ferraris, V. Papa, art. i., n. 1. [5] Ib., n. 10.

with the consent of the cardinals, issue a constitution empowering a Pope to elect his successor.[6] Not merely cardinals, but others, even laymen, are eligible to the[7] Pontificate, though since the time of Urban VI. cardinals only have been elected.[8] III. The Pope always wears the stole[9] (*orarium*); he also, at times, wears the tiara—*i.e.*, a hat or mitre encircled with three crowns, as an emblem of his supreme magisterial, legislative, and judicial authority.[10] He does not make use of the crosier, as the curved staff denotes limitation of power.[11] Again, "solus Romanus Pontifex, in missarum solemniis pallio *semper* utitur et *ubique*."[12] Others entitled to the pallium can wear it only on certain days, and *in* their churches, but not *out* of them, because they are called only in *partem sollicitudinis, non in plenitudinem potestatis*. The cross is borne before[13] the Pope wherever he goes; others, even patriarchs, cannot make use of this privilege in Rome or where the Pope may be. Moreover, the Pope usually carries the Blessed Sacrament with[14] him when on long journeys. In the following articles we shall treat of the primacy and the rights attached to it.

Art. II.

On the Primacy of the Sovereign Pontiff.

458. *Nature of the Primacy conferred by God upon the Pope.*—Primacy or supremacy, in general, is of two kinds: one of honor, the other of jurisdiction. The primacy of honor (*primatus honoris*) is that by which a person holds the first place, without having any authority over others. The primacy of jurisdiction (*primatus jurisdictionis*) is that by which

[6] Ferraris, V. Papa, art. i., n. 12. [7] Ib., n. 46–49.
[8] Phillips, Lehrb., p. 206. Ratisbon, 1871. [9] Craiss., n. 673. [10] Ib.
[11] Cap. de Sacr. Unct. [12] Cap. ad Honor. de Auctoritate et Usu Pallii.
[13] Walter, Kirchenr., § 124. Bonn, 1839. [14] Craiss., n. 673.

a person not only takes precedence of others, but has authority over them.[15] The primacy, as vested *jure divino* in the Roman Pontiff, is the pre-eminence both of honor and of jurisdiction[16] over the whole visible Church, and consists in the full and supreme[17] ordinary and immediate power to rule over the whole Church—"pascendi, regendi ac gubernandi universalem Ecclesiam *plena potestas.*"[18]

459. *Institution of the Primacy.*—We lay down the following proposition: "The Roman Pontiff has received from[19] God (*jure divino*) not only the *primatus honoris*, but also[20] *jurisdictionis* over the entire Church." This is, at present, *de fide.*[21] The proposition has two parts: the *first* regards the institution of the primacy, and asserts that the Pope has, *jure divino*, the primacy of jurisdiction; this is against Richer and the Jansenists, who maintain[22] that Christ first and directly gave jurisdiction to the entire Church,[23] or the body of the faithful, by whom it is delegated to the Pope and the[24] bishops. The *second* has reference to the nature of the primacy, and is chiefly against the Greek schismatics, who assert that the Roman Pontiff has only the *primatum honoris*, and is but the first among equals. We now proceed to prove simultaneously both parts of the above proposition as follows: Peter and his successors received from Christ the primacy, not only of honor, but also of jurisdiction over the whole Church; but the Roman Pontiff is the successor of Peter, therefore the Roman Pontiff holds from Christ the primacy not only of honor, but also of jurisdiction over the universal Church.[25]

460. We prove the *major* as follows: I. *Peter received the*

[15] Craiss., n. 674. [16] Perrone, De Rom. Pontif., cap. i.
[17] Phillips, Lehrb., p. 170. [18] Conc. Vaticanum, sess. iv., cap. iii.
[19] Phillips, l. c., p. 170. [20] Craiss., n. 675.
[21] Conc. Vaticanum, sess. iv., cap. iii.; cfr. Craiss., n. 676; Craiss., Elementa, n. 339. [22] Cfr. our Notes, p. 39.
[23] Cfr. Perrone, l. c. [24] Soglia, vol. i., p. 170. [25] Salzano, l. c., vol. ii., p. 62.

primacy from our Lord Himself.[26] This we prove, 1, *from Sacred Scripture.* The *primatus jurisdictionis* contains, *a*, the power of the priesthood (*potestas ministerii*); *b*, that of teaching (*potestas magisterii*); *c*, that of governing[27] (*potestas imperii*). Now, each of these powers was conferred by Christ upon Peter. *First*, the *potestas ministerii*—namely, the supreme power as regards divine worship, the administration of the sacraments, and the like—was promised by our Lord to Peter in these words: "Et tibi dabo claves regni coelorum. Et *quodcunque* ligaveris super terram, erit ligatum et in coelis; et *quodcunque* solveris,"[28] etc. For, in the language of the Sacred Scriptures, the giving of keys denotes the conferring of supreme power.[29] Moreover, among nearly all nations, especially the Jewish, the *traditio clavium*[30] was a symbol of the bestowal[31] of power. *Second*, Christ conferred upon Peter the *potestas magisterii*, or teaching power—*i.e.*, the power of defining questions pertaining to faith[32] and morals, and the like. Here are the words of our Saviour: "Ego autem rogavi pro te, ut non deficiat fides tua, et tu aliquando conversus, confirma fratres tuos."[33] Here Christ, speaking to Peter in the presence of the other apostles, points to the dangers and temptations they would encounter in their combat against paganism and infidelity. And although these difficulties are to be overcome, not by Peter alone,[34] but also by the other apostles, our Lord nevertheless prays only that Peter's faith may not fail; that thus he might be enabled to teach his brethren infallibly and confirm them in the faith. *Third*, the *potestas imperii—i.e.*, the power of governing, of making[35] and enforcing laws—was thus given by our Lord to Peter: "Pasce agnos; pasce

[26] First part of the major.
[27] Phillips, Lehrb., p. 171.
[28] Matth. xvi., 19; cfr. Jo. xxi., 15.
[29] Soglia, l. c., p. 140.
[30] Phillips, Kirchenr., vol. i., p. 104.
[31] Perrone, l. c.
[32] Soglia, l. c., p. 143.
[33] Luc. xxii., 32.
[34] Phillips, Kirchenr., vol. i., pp. 110–113.
[35] Soglia, l. c., p. 143.

oves meas."[36] Peter, therefore, is to rule (*pasce*) not only the faithful (*agnos*), but also the pastors themselves (*oves*)[37]—*i.e.*, the entire Church. 2. *From the Council of the Vatican:*[38] "Si quis dixerit, B. Petrum apostolum a Christo Domino constitutum non esse apostolorum omnium principem et totius Ecclesiae militantis visibile caput; vel eundem honoris tantum, non autem verae propriaeque jurisdictionis primatum ab eodem D. N. Jesu Christo directe et immediate accepisse; anathema sit." II. *The primatus—i.e., the threefold power—as above described,*[39] *is jure divino perpetual, must last to the end of the world, and therefore pass to the successors of St. Peter.* This is evident from the fact[40] that the primacy was not instituted for the personal benefit of Peter, but for the welfare of the entire Church—*i.e.*, for the preservation of her unity[41] both in faith and communion.

461. *The minor*—namely, the Roman Pontiff is the successor of St. Peter—is thus defined by the Vatican Council:[42] "Si quis ergo dixerit, non esse ex ipsius Christi Dñi institutione, seu jure divino, ut B. Petrus in primatu super universam Ecclesiam habeat perpetuo successores; aut Romanum Pontificem non esse B. Petri in eodem primatu successorem; anathema sit." Protestants strain every nerve to show that Peter either never came to Rome, or, having been there, left it again, as he did Antioch; that, consequently, the Roman Pontiffs are not the successors of St. Peter. A brief outline of Peter's life after our Lord's ascension will demonstrate how untenable and indefensible are these assertions. Peter remained in Judea nearly four years after his Master's ascension; he then went to Antioch, which he governed seven years as bishop. In the eleventh year after our Lord's Passion he repaired to Jerusalem, was

[36] Jo. xxi., 15, 17.
[37] Soglia, l. c., p. 141; cfr. Tarqu, pp. 95, 96.
[38] Sess. iv., cap. i.
[39] Second part of the major.
[40] Cfr. Conc. Vatican., l. c., cap. ii.
[41] Soglia, l. c., p. 173.
[42] Sess. iv., cap. ii.

there imprisoned by Herod, but liberated by an angel. In the same year he went to Rome. In the seventh year of his sojourn in Rome an edict was published by the Emperor Claudius exiling all Jews residing in Rome. Consequently, Peter returned to Jerusalem, where he attended the Council. Upon the death of Claudius the apostle returned to Rome, and there suffered martyrdom in the fourteenth year of Nero's reign, after having governed the see of Rome twenty-five years.[43] The fact that Peter was in Rome is attested by Papias, a disciple of the apostles; by Tertullian; by Hegesippus in the second century; by St. Jerome,[44] who explicitly writes that Simon Peter, after presiding over the See of Rome for twenty-five years, was there crucified "capite inverso," and buried "juxta viam Triumphalem."

462. *Union of the Primacy with the See of Rome.*—It is a doctrine[45] of divine revelation that the *primatus jurisdictionis* is by divine appointment, not by the will of Peter or the Church, inseparably united to the See of Rome. We say, *it is a doctrine of divine revelation;* for, though formerly an open question, at least according to some, it is at present undoubtedly *de fide*, having been thus defined by the Vatican Council:[46] "Docemus, Ecclesiam Romanam, *disponente Domino*, super omnes alias [ecclesias], ordinariae potestatis obtinere principatum."[47] Pius IX. has therefore deservedly condemned the following proposition: "Nothing forbids that the Supreme Pontificate should be transferred from the Roman bishop and city to another bishop and another State."[48] But, it may be objected: The primacy, when first instituted by Christ, was *personal—i.e.*, attached to the *person* of Peter; not *local—i.e.*, not annexed to any particular place or bishopric.[49] The objection does not hold; for the pri-

[43] Salzano, l. c., lib. ii., pp. 63, 64.
[44] In Catal. Script. Eccl. in Petro.
[45] Our Notes, p. 41.
[46] Sess. iv., cap. iii.
[47] Cfr. Craiss., n. 677, in fine.
[48] Syll., 1864, prop. xxxv.
[49] Ferraris, V. Papa, art. ii., n. 74.

macy was indeed personal—*i.e.*, attached to the person of Peter—"non tamen ut Petrus erat persona *privata*, sed ut *publica*;"[50] et ex tunc fuit [primatus] jussu Christi etiam localis, seu certo loco, Romanae Urbi nimirum affixus; adeoque non ex voluntate Petri, sed ex voluntate et jussu Christi fuit primatus Ecclesiae annexus Episcopatui Romano."[51] Nor can it be objected that the Popes may transfer the Papal See to some other city, as, in fact, they did transfer it to Avignon; for *ubi Papa, ibi Roma*—the Pope, wherever he may be, is and remains Bishop of Rome. Finally, neither will it avail to say: The city of Rome may be totally destroyed; for Rome, as a city, may perhaps perish, but Rome, as a see, is imperishable.[52]

463. *Form of Government of the Church.*—The principal forms of government are the monarchical, the aristocratic, and the democratic or republican.[53] I. *Chief errors on this point.*—1. Luther and Calvin assert that the Church has a democratic form of government, her supreme power being in the[54] hands of the people or laity. 2. The Greek schismatics, and the body of Protestants called Presbyterians, maintain that the Church has an aristocratic[55] form of government, the supreme power, according to the former, being vested in the bishops; according to the latter, in the presbytery. 3. Bossuet held that the Roman Pontiff was inferior[56] to an oecumenical council, and that the legislative power in the Church lay conjointly in the hands of the Pope and of the bishops. This opinion is at present heretical. The two preceding theories are also heretical. II. *Correct view.*—1. No small[57] number of Catholic theologians, headed by the illustrious Cardinal Bellarmine, hold that the Church is a monarchy, tempered,[58] however, by aristocracy,

[50] *I.e.*, the primacy attached to Peter, not as a *private* but *public* person.
[51] Ferraris, l. c., n. 75; cfr. Soglia, vol. i., p. 178. [52] Ib., n. 78–80, 81.
[53] Salzano, l. c., lib. i., p. 22. [54] Ib., p. 23. [55] Ib., p. 24.
[56] Ib., p. 26. [57] Ib. [58] Cfr. Devoti, Prolegom., n. 16–20.

in the sense, namely, that bishops rule in the Church *jure proprio*, being placed to rule by the Holy Ghost, but not by the Roman Pontiff. 2. Others admit[59] that bishops are placed by the Holy Ghost to rule in the Church; yet, as they are placed to rule *subordinately* to the Pope, it follows that the Church is an absolute monarchy.[60] The difference between these two opinions seems to be verbal rather than real. Both admit that the supreme power in the Church is vested in a *single* ruler—the Roman Pontiff—and that therefore the Church is a monarchy as to the form of government; according to Craisson,[61] this is *de fide*.

464. *Q.* Are all the actions of the Pope performed by him as head of the Church?

A. They are not. For the Pontiff may sometimes act, not as the Vicar of Christ, but as the Patriarch of the West, exercising only those rights which appertain to other patriarchs. Again, he may act only as the Primate of Italy, or Metropolitan of the Roman Province, or merely as Bishop of the city of Rome.[62] *Has the Sovereign Pontiff "jurisdictio immediata" over the entire Church?* We premise: 1. According to Febronius and many Gallicans, "non potest S. Pontifex ordinarie, invitis episcopis, consueta episcoporum munera in eorum dioecesibus exercere, quia non est pastor in alienis dioecesibus *immediatus*, sed tantum *mediatam* habet in iis jurisdictionem."[63] According to these writers, *jurisdictio mediata* is that which can be exercised only in certain[64] cases determined by canon law—*v.g.*, when bishops neglect their duties;[65] on the other hand, *jurisdictio immediata* is that which is exercisible by the Pope[66] or his delegates not only in case of necessity, but constantly. We now answer directly: The Roman Pontiff has direct or immediate, not

[59] Cfr. Phillips, Kirchenr., vol. i., p. 251. [60] Salzano, l. c., p. 27. [61] N. 675.
[62] Bened. XIV., De Syn., lib. ii., cap. i.; cfr. Devoti, lib. i., tit. iii., n. 21.
[63] Ap. Craiss., n. 680. [64] Cfr. Soglia, vol. i., p. 180.
[65] Cfr. our Notes, pp. 41, 42. [66] Cfr. Tarqu., p. 113.

merely mediate, authority over the whole Church. This is *de fide*,[67] being thus defined by the Vatican Council:[68] "Si quis dixerit, Romanum Pontificem non habere plenam et supremam potestatem jurisdictionis in universam Ecclesiam, aut hanc ejus potestatem non esse ordinariam et *immediatam* sive in omnes aut singulas ecclesias, sive in omnes et singulos pastores et fideles, anathema sit."

465. *Q.* Can the Pope abdicate?

A. He can; the resignation must be made to the College of Cardinals, whose exclusive privilege it is to elect the successor.[69]

466. *Q.* Is a Pope who falls into heresy deprived, *ipso jure*, of the Pontificate?

A.—1. There are two opinions: one holds that he is, by virtue of divine appointment, divested, *ipso facto*, of the Pontificate; the other, that he is, *jure divino*, only removable. Both opinions agree[70] that he must at least be *declared* guilty of heresy by the Church—*i.e.*, by an oecumenical council or the College of Cardinals. 2. The question is hypothetical rather than practical.[71] For although, according to the more probable opinion, the Pope may fall into heresy and err in matters of faith, as a private person,[72] yet it is also universally admitted that no Pope ever did fall into heresy,[73] even as a private doctor.

[67] Cfr. Craiss., n. 680.
[68] Sess. iv., cap. iii.
[69] Ferraris, V. Papa, art. ii., n. 36.
[70] Craiss., n. 682.
[71] Phillips, Kirchenr., vol. i., pp. 277, 274.
[72] Ib., p. 277.
[73] Ferraris, l. c., n. 62–66. Genuae, 1768.

CHAPTER II.

ON THE RIGHTS AND PREROGATIVES OF THE ROMAN PONTIFF.

SECTION I.

Rights of the Roman Pontiff in "Spiritual Matters."

ART. I.

Rights of the Roman Pontiff that flow "immediately" from his Primacy or Supremacy over the entire Church; his Infallibility and Supreme Legislative Authority.

467. *Mode of Determining the Rights annexed to the Primacy of the Pope.*—I. Nicholas de Hontheim (Justinus Febronius)[1] erroneously divided the rights contained in the supremacy of the Roman Pontiff into essential (*jura essentialia, primigenia*)—those, namely, which were conferred upon the Roman Pontiffs by our Lord[2] himself, and therefore exercised already in the first centuries of the Church; and into accidental (*jura accidentalia, adventitia, secundaria, accessoria, humana*)[3]—*i.e.*, those which originally, *i.e.*, in the first seven centuries of the Church, were exercised by bishops and provincial councils, but which were afterwards, chiefly through the ambition of Popes, and by means of the Isidoran decretals, annexed to the primacy. According to Febronius and his school, the primacy may exist—in fact, has existed—without the *jura accidentalia*. In this radically wrong division the *exercise* of the power inherent in the

[1] Phillips, Lehrb., pp. 171, 172, n. 1.
[2] Cfr. Soglia, vol. i., p. 183.
[3] Phillips, Kirchenr., vol. v., § 202, pp. 21–34.

Papal supremacy is confounded with the *power*[4] itself. The former, it is true, varies according to circumstances; but the latter is, and always has been, the same. II. Some Catholic canonists[6] distinguish between the various rights of the primacy according to the threefold power which Christ bestowed upon His Vicar on earth—namely, the *potestas magisterii, ministerii, et jurisdictionis* or *imperii*. Others, whom we prefer to follow, divide the rights of the primacy into those which flow *immediately* and those which flow *mediately* from the supreme power of the Pope.[8] Now, what rights emanate *immediately* or *directly* from the primacy? Those which are attached to or contained in the primacy in such manner as to be the foundation of various other rights, which latter, being based upon the former, are named mediate rights. Now, the immediate rights of the Papal supremacy are these two: infallibility and supreme legislative authority. For the Pope is the[7] *centrum necessarium totius communionis Catholicae;* this is *de fide*.[9] Now, the unity of the Church consists chiefly, 1, in the unity of faith (*in unitate fidei*), inasmuch as all the faithful, professing the same faith, constitute but[9] one Church; 2, in the unity of charity (*in unitate caritatis, communionis*), by which is meant the submission of the faithful to their bishops, and of the bishops and people to the Pope.[10] Now, if the Pope be the *centrum unitatis fidei*, and therefore charged with the preservation of unity in matters of faith and morals, he must be infallible; if he is the *centrum unitatis communionis*, and therefore commissioned to enforce unity in matters of discipline, he[11] must have legislative authority, supreme and universal.[12]

[4] Phillips, Lehrb., p. 172.
[5] Ib., p. 171.
[6] Salzano, lib. ii., pp. 68–70.
[7] Craiss., n. 684.
[8] Conc. Vaticanum, sess. iv., cap. iii., iv.; cfr. Craiss., l. c.
[9] Soglia, vol. i., p. 177.
[10] Cfr. Conc. Vaticanum, l. c., cap. iii.
[11] Cfr. Salzano, l. c., p. 69 seq.
[12] Our Notes, p. 41.

468.—I. *Infallibility of the Roman Pontiff.*—That the Sovereign Pontiff is the *centrum unitatis fidei*, and therefore vested with infallibility, is amply proved in dogmatic theology; the proofs are taken from Sacred Scripture[13] and tradition. We content ourselves here by giving the definition of the Oecumenical Council of the Vatican:[14] "Itaque nos traditioni a fidei Christianae exordio perceptae fideliter inhaerendo, ad Dei Salvatoris nostri gloriam, religionis Christianae exaltationem, et populorum Christianorum salutem, sacro approbante Concilio, docemus et divinitus revelatum dogma esse definimus Romanum Pontificem, cum ex cathedra loquitur—id est, (*a*) cum omnium Christianorum pastoris et doctoris munere fungens, (*b*) pro suprema sua apostolica auctoritate, (*c*) doctrinam de fide vel moribus (*d*) ab universa Ecclesia tenendam definit, per assistentiam divinam, ipsi in B. Petro promissam, ea infallibilitate pollere, qua divinus Redemptor Ecclesiam suam in definienda doctrina de fide vel morum instructam esse voluit; ideoque ejusmodi Romani Pontificis definitiones ex sese, non autem ex consensu Ecclesiae, irreformabiles esse. Si quis autem hinc nostrae definitioni contradicere, quod Deus avertat, praesumpserit, anathema sit." It is therefore *de fide*, at present,[15] that the Roman Pontiff, when speaking *ex cathedra*, is infallible.

469. *Q.* When does the Roman Pontiff speak *ex cathedra?*

A. He speaks *ex cathedra*, and is infallible of himself—*i.e.*, independently of the consent of the Church—1, when *as Pastor and Head* of the Church, and by virtue of his supreme apostolical authority, 2, he proposes to the *entire* Church, 3, any doctrine concerning *faith* and *morals*, 4, to be

[13] Matth. xvi.; Jo. xxi.; Luc. xxii.; cfr. Salzano, l. c., p. 71.

[14] Sess. iv., cap. iv., in fine

[15] Cfr. Craiss., n. 686.

believed under *pain of anathema*.[16] These conditions only are required for the validity of Pontifical decisions *ex cathedra*. Others are requisite for the licitness of such definitions; thus, the Pope, before giving an *ex cathedra* definition, should maturely examine into the question to be defined and consult with the cardinals; for he is merely assisted, not inspired, by the Holy Ghost when giving a definition *ex cathedra*.[17] Catholics are bound to assent to these definitions, not only externally, but also internally or mentally.[18] Moreover, the primary or chief proposition of a definition must be distinguished from propositions that are merely incidental, such as the arguments alleged by the Pope in support of the definition. The Pope is infallible only in the definition proper, not in the proofs alleged incidentally.[19]

470.—II. *Legislative Authority of the Pope*.—We now come to the second prerogative directly annexed to the primacy. The Sovereign Pontiff, as the *centrum unitatis communionis externae*, is vested, as we have seen, with supreme legislative authority over the whole Church—*i.e.*, he has, *jure divino*, power to make general laws[20] respecting the discipline of the Church; in other words, he can enact universal laws relative to divine worship, sacred rites and ceremonies, the government of the clergy, the proper administration of the temporalities of the Church, and the like.[21] Now, this power flows directly from the primacy; for the Church is a visible society, has external forms of worship, and must therefore be regulated by disciplinary laws, to be enacted by its chief ruler, the Sovereign Pontiff. Moreover, the Pope,

[16] Salzano, l. c., p. 70. Cardinal Manning expresses the same, only in different words. He says: "The Pope speaks *ex cathedra* when he speaks under these five conditions: 1, as Supreme Teacher; 2, to the whole Church; 3, defining a doctrine; 4, to be held by the whole Church; 5, in faith and morals."—The Vatican Decrees, p. 34. New York, 1875. [17] Ib.

[18] Soglia, l. c., pp. 185, 186. [19] Salzano, l. c., p. 71. [20] Ib., p. 74.

[21] Cfr. Craiss., n. 688.

as was seen, can make laws respecting faith and morals; he may, *à fortiori*, establish uniformity of worship.

Art. II.

Rights of the Sovereign Pontiff flowing Mediately or Indirectly from his Primacy.

471. We here observe that the rights of the Roman Pontiff, whether they are annexed immediately or but mediately to his supremacy, are all necessarily contained in the primacy; none[22] of them are accidental or of human origin, as Febronius contends. Having premised this, we proceed to discuss the point under consideration. The Pontiff, viewed in his relations to the particular churches of the world, to the bishops, or to the entire Church, has three sorts of rights—viz., 1, those which refer to the various dioceses of the Catholic world; 2, to the bishops of Christendom; 3, or to the universal Church. We shall briefly treat of these rights.

§ 1. *Rights of the Sovereign Pontiff in relation to the various Dioceses of Christendom.*

472. These rights are reduced chiefly to four: I. *Right of demanding an account of the state of each diocese throughout the world* (*jus relationum*).—The Pope, as we have shown, has supreme and unappealable jurisdiction, not only in matters of faith and morals, but also of discipline.[23] It is the duty of the Sovereign Pontiff to watch over the discipline of the entire Church.[24] He must therefore know the condition of all the churches or dioceses in the world. Hence he must have the right to demand from bishops an

[22] Cfr. Phillips, Lehrb., p. 172.

[23] Salzano, lib. ii., p. 74.

[24] Phillips, Kirchenrecht, vol. v., § 203, p. 34.

account of the state of their dioceses[25] (*jus relationum*). Bishops are therefore obliged to visit Rome in person (*visitatio liminum S.S. apostolorum*) at certain intervals, and to report the exact state of their dioceses (*relationes status*). The bishops of Italy and Greece must go to Rome once every three years; the bishops of Germany, France, Spain, Portugal, Belgium, England, Scotland, and Ireland, once every four years; the bishops of the rest of Europe, of North Africa, once every five years; finally, the bishops of America, once every ten years.[26] From this right of supreme direction, inherent in the Pontiff,[27] there follows to him the right, in the exercise of this his office, of freely communicating with the pastors and flocks of the whole Church.[28] II. *Power to punish delinquents.*—The Roman Pontiff, as we have shown, is vested with the supreme law-making power in the Church. Now, the legislative necessarily includes the executive or coactive power; for laws that cannot be enforced are not, properly speaking, laws.[29] III. *Power to grant dispensations.*—A law, to be just, should be binding on all persons within its sphere; yet being made for the common good—*i.e.*, for general purposes—it is not always useful or applicable in particular cases. Hence, laws should admit[30] of reasonable exceptions or dispensations. Now, it is evident that only those officials can suspend the force of a law in special cases, or dispense from it, who can make the law. The Roman Pontiff is, as was seen, the supreme law-maker in the Church; therefore he[31] can dispense from the laws of the Church, even those enacted by oecumenical councils.[32] But to this the objection is made that the Pontiffs have themselves acknowledged that they were subject to the canons,

[25] Phillips, Lehrbuch, p. 173. [26] Ib., note 5.
[27] Phillips, Kirchenr., vol. v., p. 38. Regensburg, 1854.
[28] Conc. Vaticanum, sess. iv., cap. iii. [29] Salzano, l. c., p. 75.
[30] Ib., p. 76. [31] Phillips, Lehrb., pp. 175, 176, 178. [32] Craiss., n. 692.

and therefore could not dispense from them. This objection does not hold; for the Popes distinguish between two kinds of canons—those, namely, which relate to themselves, and those which refer to others. They acknowledge themselves subject to those laws of the first class which confirm a divine or natural law; but if these laws are merely of ecclesiastical origin, they bind the Roman Pontiffs only *quoad vim directivam*, not *quoad vim coactivam*. Laws of the second class—*i.e.*, those which have no reference to the Sovereign Pontiffs—should, as a rule, be enforced by the Popes. We say, *as a rule;* for they are dispensable, as has been shown.[33] Dispensations granted by the Sovereign Pontiffs, without sufficient reasons, are valid, though illicit.[34] Though Popes, as we have just seen, cannot dispense *in rebus juris divini*,[35] they may nevertheless declare that, in certain contingencies, the *jus divinum* ceases to bind.[36] IV. *Right of receiving appeals from the sentences of all ecclesiastical tribunals.*—Man, even in his judicial decisions, is naturally liable to error.[37] The remedy of appeal, therefore, from an inferior to a superior judge, necessarily exists in every society. The Roman Pontiff, therefore, as the supreme judge in the Church, can receive appeals from all parts of the Catholic world. His sentence alone is unappealable.[38]

§ 2. *Rights of the Pope respecting Bishops.*

473. Christ conferred upon Peter and his successors power to feed and govern, not only his lambs—*i.e.*, the faithful—but also the shepherds—*i.e.*, the bishops. The rights of the Pontiff relative to bishops are four: I. *The Pope, by virtue of his primacy, can create bishops and transfer them from one place to another.*[39]—The Council of Trent[40]

[33] Salzano, l. c., pp. 76, 77. [34] Phillips, Lehrb., p. 179. [35] Ib.
[36] Craiss., n. 693. [37] Salzano, l. c., p. 77. [38] Phillips, l. c., p. 180.
[39] Salzano, l. c., p. 85. [40] Sess. xxiii., cap. iv., can. 8.

says: "If any one saith that the bishops, who are assumed [*i.e.*, appointed] by authority of the Roman Pontiff, are not legitimate and true bishops, but are a human figment, let him be anathema." Now, if the Pope alone can appoint bishops, it follows that he alone can transfer them from one see to another.[41] II. *Right of reserving cases.*—It is a disputed question whether bishops receive jurisdiction immediately[42] from the Pope or from God. One thing, however, is certain—namely, the jurisdiction of bishops, so far as its exercise is concerned, depends[43] upon the Sovereign Pontiff, whose privilege it is to assign to bishops their subjects. Hence, the Pope may restrict the authority of bishops, and reserve to himself the absolution from the more grievous crimes.[44] III. *The Pontiff, by virtue of his primacy, has the right to depose bishops from their sees,*[45] *and to reinstate them.* This follows from what has been said. IV. *Finally, the Pope has the right to convoke, preside over, and confirm oecumenical councils.* This proposition needs no proof. Bishops, therefore, are obliged, if not lawfully[46] hindered, to assist at these councils. The body of bishops, when separated from the Pontiff, has no supreme[47] power in the Church. Hence, it is absurd to say that an oecumenical council[48] is superior to the Pope; for no council is oecumenical except when united[49] to the Pope.

§ 3. *Rights of the Pontiff relative to the Entire Church, or the Church as a Whole.*

474. The rights of the Roman Pontiff, falling under this head and emanating mediately from his primacy, may be reduced to four, discussed under the following heads: I. *Di-*

[41] Phillips, l. c., p. 188. [42] Cfr. our Notes, p. 77
[43] Salzano, l. c., p. 86; cfr. Craiss., n. 690, 868.
[44] Conc. Trid., sess. xiv., cap. vii. [45] Salzano, l. c., p. 87.
[46] Ib. [47] Craiss., n. 690. [48] Ib., 691.
[49] Salzano, l. c., p. 90; cfr. Conc. Vaticanum, sess. iv., c. iii.

vision and union of dioceses.—1. The Pope alone can divide a diocese into two or more. Dioceses are divided for various reasons—*v.g.*, when they are vast.[50] As a rule, the bishop of the diocese to be divided is consulted[51] as to the division; his consent, however, is not essential. 2. The Holy See alone can unite two or more dioceses into one. Dioceses are united for different reasons—*v.g.*, when they are small.[52] II. *Canonization of saints and uniformity of liturgy.*—Both these are of interest to all Christendom. Hence, it is the prerogative of the Roman Pontiff to enact laws in regard to the canonization of saints; he may also correct the Roman Missal and Breviary, and, in general, ordain all that pertains to the sacred liturgy.[53] III. *Religious orders.*—These, too, have a certain relation to the whole Church; hence, they are instituted,[54] approved, and, if need be, suppressed, by the Pontiff. IV. *Plenary indulgences.*—The Roman Pontiff, as head of the Church, is the supreme dispenser of her treasures; he alone, therefore, can grant plenary indulgences for the *entire* Church.[55]

475. *Rights of the Sovereign Pontiffs relative to the Causae Majores.*—It is certain that all *causae majores* are reserved to the Holy See. Now, by *causae majores* we mean, in general, all ecclesiastical matters of more than ordinary importance or difficulty. Such matters may be of a graver character, either *intrinsically—i.e.*, by their very nature, *v.g.*, questions of faith or general discipline; or *extrinsically—i.e.*, because of certain circumstances, *v.g.*, difficulties between bishops and the civil power.[56] Now, all matters of this kind are to be referred by bishops to the Holy See, and determined solely by it. For the Pontiff, as we have shown, has *jurisdictio immediata* over the entire Church; hence, he can reserve—in fact, has reserved—to himself the power to

[50] Salzano, lib. ii., p. 88. [51] Phillips, Lehrb., p. 185. [52] Ib.
[53] Salzano, l. c., p. 89. [54] Ib. [55] Ib. [56] Phillips, l. c., p. 180.

decide all matters of greater moment. Canonists[57] disagree as to what matters are precisely to be considered *causae majores*. *The Potestas Ordinaria and Extraordinaria of the Roman Pontiff.*—When the Roman Pontiff accommodates himself in his proceedings to the rules established by his predecessors or to the decrees of oecumenical councils, he is said to proceed *de jure ordinario*,[58] *de potestate ordinaria*; but when he does not observe these prescriptions, he acts *de jure extraordinario*. In derogating, however, from the Council of Trent, the Pope does not act *de potestate extraordinaria*; for this Council[59] itself says: "All things which have been ordained in this sacred Council have been so decreed as that *the authority of the Apostolic See is untouched thereby*."

Art. III.

Rights of the Pope as Bishop, Metropolitan, Primate, and Patriarch.

476. The city of Rome and the surrounding country within a circumference of forty miles forms the diocese[60] of the Pope, in his capacity of bishop. This diocese is governed by the Pontiff in the same manner as other dioceses are ruled by other bishops. The Pope, however, does not personally or directly administer the diocese of Rome, but appoints one of the cardinals resident in Rome to take direct charge of it, and act in his stead or as his vicar. This cardinal-vicar is assisted in the administration of the diocese by a coadjutor or suffragan bishop (*vice-gerente*), who in turn is aided by a number of inferior officials.[61] The Pope is also metropolitan of ten suburbicarian provinces,[62] Primate of Italy, and Patriarch of the West,[63] and therefore, in

[57] Cfr. Craiss., n. 694. [58] Ib., n. 695. [59] Sess. xxv., cap. xxi., d. R.
[60] Phillips, l. c., pp. 201, 202. [61] Ib., p. 203. [62] Craiss., n. 679.
[63] Bened. XIV., De Syn., lib. ii., cap. ii.

these various capacities, exercises the prerogatives attaching to these several dignities.

SECTION II.

On the Rights of the Supreme Pontiffs in "Temporal Matters."

ART. I.

Various Opinions on this Head—Distinction between the Direct and Indirect Power of Pontiffs in Temporal Things.

477.—I. There are four different opinions[64] respecting the power of the Popes in temporal things: 1. *The first* holds that the Sovereign Pontiff, as such, has, *jure divino*, absolute power over the whole world, in political as well as ecclesiastical affairs. 2. *The second*, held by Calvinists and other heretics, runs in the opposite extreme, and pretends (*a*) that the Sovereign Pontiff has no temporal power whatever; (*b*) that neither Popes nor bishops had any right to accept of dominion over cities or states, the temporal and spiritual power being, *jure divino*, not unitable in the same person. 3. *The third*, advanced by Bellarmine and others, maintains that the Pope has, *jure divino*, only spiritual, but no direct or immediate temporal, power; that, however, by virtue of his spiritual authority, he is possessed of power, indirect indeed, but nevertheless supreme, in the temporal concerns of Christian rulers and peoples; that he may, therefore, depose Christian sovereigns, should the spiritual welfare of a nation so demand. Thus, as a matter of fact, Pope Innocent IV., in pronouncing sentence of deposition against Frederic II., explicitly says that he deposes the emperor *auctoritate apostolica et vi clavium*. 4. *The fourth* opinion holds that the Sovereign Pontiff has full *spiritual* authority over princes no

[64] Bouvier, Tract. de Vera Ecclesia, part iii., p. 427, vol. i. Parisiis, 1844.

less than over the faithful; that therefore he has the right to teach and instruct them in their respective duties, to correct and inflict spiritual punishments upon both rulers and peoples; but that, *jure divino*, he has no power, as asserted by Bellarmine, whether direct or indirect, in the temporal affairs of Catholic sovereigns or peoples. We say, as asserted by Bellarmine; for the advocates of this opinion, by giving the Pope full power to correct princes and peoples, necessarily attribute to him an *indirect* power in temporal things; they deny, however, that this *potestas indirecta in temporalia* includes the deposing power, as maintained by Bellarmine. II. The first opinion is untenable, and is refuted by Bellarmine himself; the second is heretical;[65] the third and fourth seem to differ chiefly as to the deposing power of the Popes, but agree in granting that the Roman Pontiff has an indirect power in temporal things; both may be lawfully held. Before we proceed to explain our own views in this matter, and to show the relation of Church and state, we shall point out, for the better understanding of the subject under consideration, the difference between the direct and the indirect power in temporal things.

478. *Q.* What is meant by direct and indirect power in temporal affairs?

A. We have already shown[66] what things are to be considered temporal, what spiritual, and what mixed questions. Now, it is certain that temporal things are not so exclusively adaptable to the wants of this life[67] as not to be either conducive or injurious to the salvation of the soul. But it is also certain that the Church, in order to fulfil her mission, which is to save men, must have power to remove obstacles in the way of salvation. The Church, therefore, or the Pope, has authority in temporal matters, not indeed directly —*i.e.*, not in temporal matters, as such, or in themselves (*po-*

[65] Cfr. Craiss., n. 696. [66] Supra, n. 204–207. [67] Craiss., n. 697.

testas directa et immediata in res temporales)—but indirectly—*i.e.*, in temporal matters, so far as they relate to the salvation of the soul (*potestas indirecta in temporalia*); in other words, the Pope has power to overrule, correct, or set aside those temporal means which hinder men from attaining to eternal happiness. Having premised this, we proceed to our thesis proper.

Art. II.

Relation of Church and State.

479. From what has been said we infer: 1. In all things which are purely temporal, and lie *extra finem Ecclesiae*—outside of the end of the Church—it (*i.e.*, the Church) neither claims nor has jurisdiction. 2. In all things which promote or hinder the eternal happiness of men the Church has a power to judge and to enforce.[68] We now apply these principles to the relations of the spiritual and civil powers—*i.e.*, between Church and state—by laying down these propositions:

480. *Proposition I.—In things temporal, and in respect to the temporal end* (*of government*), *the Church has no power over the state.*[69]—The proof of this proposition is that all things merely temporal are beside (*praeter finem Ecclesiae*) or outside of the end of the Church. Now, it is a general rule that no society has power in those things which are out of its own proper end. Hence, the civil society or the state, even though every member of it be Catholic,[70] is not subject to the Church, but plainly independent in temporal things which regard its temporal end.[71]

481. *Proposition II.—In whatsoever things, whether essentially or by accident, the spiritual end—that is, the end of the*

[68] Manning, The Vatican Decrees, p. 55.

[69] Card. Tarqu., Jur. Eccl. Publ. Inst., n. 54 pp. 55, 56. [70] Ib., p. 56.

[71] Cfr. Manning, l. c., pp. 70, 71.

Church—is necessarily involved, in those things, though they be temporal, the Church may by right exert its power, and the civil state ought to yield.[72]—In this proposition is contained the full explanation of the indirect spiritual power of the Church over the state.[73] The proposition is proved: I. *From reason.*—Either the Church has an indirect power over the state, or the state has an indirect power over the Church. There is no alternative. For, as experience teaches, conflicts may arise between Church and state.[74] Now, in any question as to the competence of the two powers,[75] either there must be some judge to decide what does and what does not fall within their respective spheres, or they are delivered over to perpetual doubt and to perpetual conflict. But who can define what is or is not within the jurisdiction of the Church in faith and morals, except a judge who knows what the sphere of faith and morals contains and how far it extends?[76] It is clear that the civil power cannot define how far the circumference of faith and morals extends. To do this it must know the whole deposit of explicit and implicit faith. Therefore, the Church alone can fix the limits of its jurisdiction; and if the Church can fix the limits of its own jurisdiction, it can fix the limits of all other jurisdiction—at least, so as to warn it off its own domain.[77] Hence, the Church is supreme in matters of religion and conscience; she knows the limits of her own jurisdiction, and, therefore, also the limits of the competence of the civil power. Again, if it be said that the state is altogether independent of the Church, it would follow[78] that the state would also be independent of the law of God in things temporal; for the divine law must be promulgated by the Church. It is unmeaning to say that princes have no supe-

[72] Card. Tarqu., l. c., lib. i., p. 56, n. 55. [73] Manning, l. c., pp. 70, 71.
[74] Craiss., n. 698. [75] Cfr. Phillips, Kirchenr., vol. ii., pp. 546, 547.
[76] Manning, l. c., pp. 54, 55. [77] Cfr. Syllab. 1864, prop. 19, 20, 39, 42, 54.
[78] Craiss., n. 698.

rior but the law of God ;[79] for a law is no superior without an authority to judge and to apply it. II. We next prove our thesis *from authority*. We refer to the famous bull *Unam Sanctam*, issued by Pope Boniface VIII. in 1302. This bull declares that there is but one true Church,[80] and therefore but one head of the Church—the Roman Pontiff; that there are two swords—*i.e.*, two powers—the spiritual and the temporal; the latter must be subject to the former. The bull finally winds up with this definition: "And this we declare, affirm, *define* (*definimus*), and pronounce, that it is necessary for the salvation of every human creature that he should be subject to the Roman Pontiff."[81] This is undoubtedly a *de fide* definition—*i.e.*, an utterance *ex cathedra*.[82] In fact, the bull, though occasioned by and published during the contest between Boniface VIII. and Philip the Fair, King of France—who held that he was in no sense subject to the Roman Pontiff—had for its object, as is evident from its whole tenor and wording, this: to define dogmatically the relation of the Church to the state[83] *in general;* that is, universally, not merely the relations between the Church and the particular state or nation—France. Now, what is the meaning of this *de fide* definition? There are two interpretations: *one*, given by the enemies of the Papacy, is that the Pope, in this bull, claims,[84] not merely an indirect, but a direct and absolute, power over the state, thus completely subordinating it to the Church ;[85] that is, subjecting it to the Church, even in *purely temporal things*. This explanation, given formerly by the partisans of Philip the Fair, by the Regalists in the reign of Louis XIV., and at present by Janus, Dr. Schulte,

[79] Manning, l. c., p. 51.
[80] Phillips, l. c., vol. iii., pp. 256, 257 ; cfr. Darras, Hist., vol. iii., p. 454.
[81] Fessler, True and False Infallibility, p. 81.
[82] Manning, l. c., p. 57.
[83] Phillips, l. c., vol. iii., pp. 255, 256.
[84] Cfr. ib., p. 206.
[85] Cfr. Manning, l. c , pp. 61–64.

the Old Catholics, and the opponents of the Papal infallibility in general, is designed to throw odium upon the Holy See and arouse the passions of men, especially of governments, against the lawful authority of the Sovereign Pontiffs. The *second* or Catholic interpretation is that the Church, and therefore the Pope, has indirect authority over the state; that therefore the State is subject to the Church in temporal things, *so far as they relate to eternal salvation or involve sin.* Thus, the illustrious Bishop Fessler,[86] Secretary to the Vatican Council, says that this bull affirms merely that Christian rulers are subject to the Pope, *as head of the Church*,[87] but not in purely temporal things; "still less," continues Fessler, "does it [the bull] say (as Dr. Schulte formulates his second proposition) that the temporal power must act unconditionally in subordination to the spiritual." That this is the correct interpretation appears, 1, from the whole tenor of the bull itself; for it expressly declares that the spiritual and temporal powers are distinct one from the other; that the former is to be used *by* the latter *for* the Church. Again it says: "The spiritual power (*i.e.*, the Church) has to instruct and judge the earthly power, *if it be not good.*[88] If, therefore, the earthly power deviates (from its end), it will be judged by the spiritual."[89] 2. Again, before issuing the bull *Unam Sanctam*, Pope Boniface VIII. had already declared, in a consistory[90] held in 1302, that he had never dreamt of usurping upon the authority of the King (of France)[91]—*i.e.*, of assuming any power over the state in purely temporal matters; but that he had declared, in the bull *Ausculta Fili* (A.D. 1301), the King (of France) to be, like any other Christian, subject to him *only in regard to sin.* It is therefore *de fide* that the Church, and therefore

[86] L. c., p. 82.

[87] Cfr. Phillips, l. c., p. 256; cfr. Walter, Lehrb., § 42, p. 75, note (a). Bonn, 1839. [88] Ap. Manning, l. c., p. 60. [89] Cfr. Phillips, l. c., p. 255.

[90] Ib., p. 254. [91] Manning, l. c., p. 62.

the Pope, has indirect power over the state, and that consequently the state, in temporal things that involve sin, is subject to the Church.

482. From what has been said we infer: 1. The authority of princes and the allegiance of subjects in the civil state of nature are of divine ordinance; and, therefore, so long as princes and their laws are in conformity to the law of God, the Church has no jurisdiction against them nor over them.[92] 2. If princes and their laws deviate from the law of God, the Church has authority from God to judge of that deviation, and to oblige to its correction.[93] 3. This authority of the Church is not direct in its incidence on temporal things, but only indirect. 4. This indirect *power* of the Church over the state is inherent in the divine constitution and commission of the Church; but its *exercise* in the world depends on certain moral and material conditions by which alone its exercise is rendered either possible or just.[94] This last conclusion is carefully to be borne in mind; it shows that, until a Christian world and Christian rulers existed,[95] there was no subject or *materia apta* for the exercise of the supreme judicial authority of the Church in temporal things. So much for the relation of the Church to the infidel state. When a Christian world came into existence, the civil society of man became subject to the spiritual direction of the Church. So long, however, as individuals only subjected themselves, one by one, to its authority, the conditions necessary for the exercise of its office were not fully present. The Church guided men, one by one, to their eternal end; but as yet the collective society of nations was not subject to its guidance. It is only when nations and kingdoms become socially subject to the supreme doctrinal and judicial authority of the Church that the conditions of its exercise are verified. So much for the relation

[92] Manning, l. c., p. 56. [93] Ib. [94] Ib. [95] Ib., p. 81.

of the Church to the Catholic state.[96] At present the world or civil society, with scarcely a single exception, has ceased to be Catholic, or even Christian. It has withdrawn itself socially as a whole,[97] and in the public life of nations, from the unity and the jurisdiction of the Christian Church. Now, the Church, it is true, never loses its jurisdiction *in radice* over the baptized; but it never puts it forth in regard to heretics or the heretical state. So much for the relation of the Church to the heretical state. In this entire question, therefore, the authority itself of the Church must be distinguished from its exercise.

Art. III.

The Deposing Power.

483. This question is at present of little or no practical consequence; for, according to all canonists and theologians,[98] Popes can depose Catholic princes only—*i.e.*, princes who are Catholics not only as individuals, but as rulers; in other words, only those princes who are at the head of Catholic nations, where the Catholic religion is the only religion recognized by law. By what right was the deposing power exercised by the Sovereign Pontiffs? There are two opinions among Catholic writers: one holds that it was exercised merely by virtue of the *jus publicum* of the mediaeval ages; the other, that the deposing power, as exercised by Pope Gregory VII. and other Pontiffs, is inherent in the primacy, being included in the indirect power of the Pope in temporal things.[99] This opinion is thus expressed in our article on Gregory VII., published in *Brownson's Quarterly Review*:[100] "The power itself [*i.e.*, of deposing princes] *in*

[96] Manning, l. c., p. 82.
[97] Ib., p. 87.
[98] Bouvier, Instit. Theolog., vol. i., pp. 432, 436, 437.
[99] Cfr. Manning, l. c., p. 77.
[100] April, 1875, p. 211.

radice, we hold, is inherent in the Papacy; the power *in actu*, or its exercise, depends upon external circumstances." The moral conditions which justified the deposition of princes, when the world was Catholic, have absolutely ceased to exist, now that the world has ceased to be Catholic, and even Christian.[101] While, therefore, in former times, the exercise of the deposing power was legitimate, it would not be legitimate at present.[102] Again, it must be remembered that the depositions of princes were *actions* of the Popes, but not infallible *definitions*, which a Catholic must accept.[103] Not one of the Papal bulls deposing sovereigns has the faintest trace of being a de fide definition;[104] they are merely penal sentences. Hence it is, as Pope Pius IX. himself, in one of his discourses,[105] says "that the right of deposing princes has nothing to do with the Pontifical infallibility; neither does it flow from the *infallibility*, but from the *authority*, of the Pontiff."[106]

Art. IV.

Of the Temporal Principality of the Roman Pontiffs.

484. The primacy is essentially a spiritual office, and has not, of divine right, any temporal appendage;[107] yet the Pope is, or rather was, sovereign of a small principality in Italy, designated the Patrimony of St. Peter or the States of the Church. This temporal dominion, it is true, was not bestowed by God upon the Pope in the beginning;[108] for, even toward the close of the sixth century, the Pontiffs were not as yet independent rulers of temporal dominions.[109] But

[101] Manning, l. c., p. 87. [102] Ib., p. 84. [103] Fessler, l. c., pp. 85, 86.
[104] Ib., pp. 86, 87. [105] Discorsi di Pio IX., July 20, 1871. Rome, 1872.
[106] Cfr. Manning, l. c., pp. 85, 86.
[107] Kenrick, Primacy, p. 218. Philadelphia, 1845.
[108] Conc. Pl. Balt. II., n. 47. [109] Phillips, Lehrb., pp. 199, 200.

when the Roman Empire was overthrown and divided into several kingdoms,[110] then it was that the Sovereign Pontiffs obtained their temporal principality,[111] *divinae providentiae consilio.*[112] This civil dominion of the Pope, whether acquired by the munificence of princes or the voluntary submission of peoples,[113] though not essential to the primacy, is nevertheless very useful, nay, in the present state of things,[114] in a measure necessary, to the free exercise of the prerogatives of the Pope as head of the Church.[115] Princes, in fact, would scarcely be willing to obey a Pontiff placed under the civil power of another ruler.[116] Napoleon I. said: We respect the spiritual authority of the Pontiff precisely because he resides neither in Madrid, nor in Vienna, nor in any other state, but in Rome. Pius IX.[117] himself points out how fitting it is in every respect that no occasion should exist for suspecting that the Pope, in the administration of the Church,[118] may sometimes act under the influence of the civil power or of political parties. Now, such suspicions would be unavoidable should the Pontiff be the subject of some civil ruler. The temporal principality of the Popes has existed already eleven centuries, and thus precedes by a long lapse of time every existing sovereignty. There is, it is true, no divine guarantee that this power shall continue;[119] it has been treacherously wrested from the present Pontiff by the Italian government. That, however, it will revert to the Popes we have no doubt. Napoleon I., too, took these possessions from the aged Pius VII. Yet Napoleon's empire has since vanished like a dream, while the patrimony of St. Peter passed again into the hands of the Pontiffs.

[110] Kenrick, l. c., p. 223.
[111] Soglia, vol. i., pp. 254, 255.
[112] Ap. Conc. Pl. Balt. II., n. 47.
[113] Craiss., n. 701.
[114] Conc. Pl. Balt. II., n. 47.
[115] Cfr. Syllab., prop. 75, 76.
[116] Soglia, l. c., p. 254.
[117] Litterae, March 26, 1860.
[118] Cfr. Kenrick, l. c., p. 228.
[119] Ib.

485. The Council of Baltimore [120] directs that an annual collection be taken up for the Holy Father in every diocese of the country on the Sunday within the octave of the Feast of Saint Peter and Saint Paul, or such other Sunday as the ordinary may direct.

[120] Pl. II., n. 48.

CHAPTER II.

ON THE ASSISTANTS OR MINISTERS OF THE SOVEREIGN PONTIFF—THE "CURIA ROMANA."

486. By the *Curia Romana* we mean, in a strict sense, only those officials[1] whom the Sovereign Pontiff regularly makes use of to assist him in the government of the *universal Church;*[2] in a broad sense, also those who aid the Pope in his capacity of Bishop of Rome, Metropolitan, or Primate.[3] All these assistants are appointed by the Pope.[4] The persons composing the Court of Rome (*Curia Romana*) are divided into three classes, designated respectively *Cardinals* of the Holy Roman Church (*Cardinales S. R. E.*), *Prelates* of the Holy Roman Church (*Prelati S. R. E.*), and *curiales* in the strict sense of the term. The latter (*curiales*) are made up of the various magistrates not in prelatical dignity, of advocates and procurators, solicitors and agents, of notaries, and all those who form the cortége of the Pope.[5] These various ministers are either *intra curiam—v.g.*, cardinals—or *extra curiam—v.g.*, legates, nuncios, and the like.[6] We shall, therefore, divide this chapter into two sections: one treating of the Papal assistants *intra curiam*, the other of those *extra curiam*.

[1] Phillips, Lehrb., p. 208. [2] Cfr. Phillips, Kirchenrecht, vol. vi., p. 7.
[3] Ib [4] Ib. [5] Ib., p. 10. [6] Craiss., n. 701, 702.

SECTION I.

Of the Assistants of the Sovereign Pontiff "intra curiam."

ART. 1.

Of Cardinals.

§ 1. *Origin, Appointment, and Number of Cardinals.*

487. *Origin.—Cardinals* are the immediate[7] counsellors or advisers of the Pope, and form, so to speak, the senate of the Roman Church.[8] Hence, they are compared to the seventy Levites appointed to assist Moses, and to the apostles chosen to aid our Lord. The College of Cardinals is thus defined: "Clericorum coetus ad auxiliandum Romano Pontifici in Ecclesiae regimine, sede plena, et ad supplendum eundem, sede vacante, institutus."[9]

488. *Q.* Are cardinals of divine or human institution?

A. The question is controverted.[10] It were difficult to show that the dignity of cardinals, as at present understood, is not of merely ecclesiastical institution.[11] The name itself of cardinal does not seem to have been used before the time of Pope St. Sylvester.[12] At first it was applied to all ecclesiastics permanently in charge of churches.[13] Pope Pius V. in 1567 ordained that it should henceforth be exclusively applied to the cardinals of the Roman Church.[14] Yet in Naples, even at present, fourteen canons are named cardinals.[15] In several other dioceses, also, some of the canons are still called cardinals.[16] Cardinals are so called from the word *cardo*, a hinge; for, says Pope Eugenius IV.,[17] "sicut

[7] Phillips, Kirchenr., l. c., p. 10. [8] Craiss., n. 702. [9] Ib.
[10] Ib., n. 703. [11] Cfr. Ferraris, V. Cardinalis, art. i., n. 1, 2. [12] Ib., n. 3, 4.
[13] Soglia, vol. i., p. 257. [14] Ferraris, l. c., n. 6. [15] Salzano, lib. ii., p. 99.
[16] Craiss., n. 704. [17] Const. *Non Mediocri*, § 14.

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super *cardinem* volvitur ostium domus, ita super eos [*cardinales*] sedis apostolicae ostium quiescit." The cardinals are, so to say, the hinges upon which the government of the entire Church turns.[18]

489. *Mode of Appointment of Cardinals.*—1. The manner of creating cardinals underwent change from time to time. Several things prescribed in the Roman ceremonial are now obsolete. The Sovereign Pontiff has the sole and free power of appointment to the cardinalate; in making appointments he is not obliged to use any specific formula, though the following is given in the Roman ceremonial: "Auctoritate Dei Patris . . . assumimus N. in presbyterum vel diaconum S. R. Ecclesiae cardinalem."[19] 2. If the newly-appointed cardinal is in Rome, he proceeds to the Apostolic Palace, where one of the old cardinals presents him to the Holy Father, who then gives him the red cap (*birretum rubrum*), and, in a subsequent public consistory, also the red hat (*galerum rubrum*). The ceremony of closing and opening the mouth,[20] of giving the ring and assigning the title, takes place in a later consistory. 3. To cardinals elect not living in Rome[21] the red cap or beretta only is sent, and they must promise on oath to visit the Holy Father within a year, so that the other ceremonies of their elevation may take place. 4. Cardinals, at present, obtain all the rights of cardinals the moment they are appointed in secret consistory, even before they are invested with any of the insignia of the cardinalate. Hence, the above ceremonies—namely, the imposing of the red cap and hat, etc.—are not absolutely necessary.[22]

490. *Q.* What qualifications are required for the cardinalate?

A. 1. The same as those prescribed by the Council of

[18] Ferraris, l. c., n. 8. [19] Ap. ib., n. 9–13. [20] Phillips, Lehrb., p. 210.
[21] Ib. [22] Ferraris, l. c., n. 20–24.

Trent[23] for the episcopal dignity. Hence, only those should be made cardinals who have the purity of morals, age, learning, and other qualifications required by the Council of Trent for bishops. Only such persons as are of the most exalted merit should be raised to the cardinalate. 2. The Pope should,[24] as far as it can be conveniently done, select the cardinals out of all the nations of Christendom. 3. Not less than four should be taken from the regular and mendicant orders.[25] For the other qualifications, see Ferraris.[26]

491. *Orders of Cardinals.*—Cardinals are divided into the three orders of bishops, priests, and deacons.[27] The origin of this classification dates far back. Thus, 1, the order of cardinal-priests seems to have originated in this manner: Pope St. Evaristus, in the first century of the Church, established seven *titles* or churches, which were entrusted to the care of seven priests, who there administered the sacraments *proprio jure*,[28] and who were afterwards called cardinal-priests. 2. The origin of cardinal-deacons is this:[29] To the seven priests just mentioned were associated seven deacons (*diaconi, regionarii*), so called[30] because they presided over the seven *diaconiae—i.e.*, hospitals, and hospices or houses, situate in the different quarters of Rome, where orphans, widows, and the poor in general were received and supported out of the patrimony of the Church. The erection of these *diaconiae*, to which chapels were also attached, is ascribed by the *Liber Pontificalis* to Pope Clement I. (91–100). These deacons were afterwards termed cardinal-deacons. 3. The order of cardinal-bishops came into existence in the seventh or, according to some,[31] in the eleventh century, when the Sovereign Pontiffs appointed

[23] Sess. xxiv., cap. i., de Ref. [24] Ib. [25] Sixtus V., *Const. Postquam.*
[26] V. Cardinalis, art. i., n. 24–38. [27] Phillips, Lehrb., p. 209.
[28] Salzano, lib. ii., p. 100. [29] Ib.
[30] Phillips, Kirchenr., vol. vi., pp. 65–77. [31] Soglia, vol. i., p. 257.

the seven suburban bishops of Rome as their assistants in the government of the entire Church.

492. *Number of Cardinals.*—The number of cardinals has, in the course of time, suffered frequent changes.[32] In the time of Pope Paschal II. there were ninety cardinals. Pope Sixtus V.[33] ordained that their number should not exceed seventy. Nor have any Popes, from the time of Sixtus V. to the present day, departed from this rule.[34] Of this number six are cardinal-bishops, fifty cardinal-priests, and fourteen cardinal-deacons.[35] We observe here, there is a material difference between a bishop who is made a cardinal and a cardinal-bishop. Only the six bishops of the suburbicary dioceses (*Ecclesiae suburbicariae*) of Rome are cardinal-bishops,[36] or bishops of the Roman Church. All other cardinals, even though bishops by consecration and in charge of dioceses, are but cardinal-priests, or, as the case may be, cardinal-deacons; they are bishops, indeed, of their respective dioceses, but only priests or deacons of the Roman Church.[37]

§ 2. *Rights and Duties of Cardinals.*

493.—I. *Dignity and Rights of Cardinals.*—The cardinalate is, after the Papal, the highest dignity in the Church.[38] Being the electors of the Sovereign Pontiff *sede vacante*, and his counsellors[39] *sede plena*, the cardinals take precedence of even patriarchs, metropolitans, and primates.[40] The reason is that priority of rank is regulated, not by the *ordo*, but by one's office and *jurisdictio*.[41] Now, cardinals have greater

[32] Phillips, Lehrb., p. 209. [33] *Const. Postquam;* cfr. Craiss., n. 708.
[34] Ferraris, l. c., n. 40.
[35] Salzano, l. c., p. 100; cfr. De Luise Codex Can. Eccl., p. 14. Neapoli, 1873. [36] Cfr. Craiss., n. 708. [37] Salzano, l. c., p. 100.
[38] Ferraris, V. Cardinalis, art. ii., n. 1.
[39] Devoti, lib. i., tit. iii., sect. ii., n. 22 seq.
[40] Phillips, Kirchenr., vol. vi., pp. 256–263. [41] Ferraris, l. c., n. 2–5.

jurisdictio than bishops; for, together with the Pope, they have charge, not of one diocese each, as other bishops, but of all the dioceses of the Catholic world.[42] Cardinals are, moreover, Roman princes[43]—nay, are considered princes of the blood.[44]

494.—II. *Duties of Cardinals.*—Their duties regard either their own churches or titles (*tituli*) or the entire Church. 1. *Duties of Cardinals relative to their Titles.*—1. Cardinals have ample jurisdiction in all matters relating to the management and ecclesiastical discipline of their titular churches;[45] but they are no longer, as formerly, vested with *jurisdictio quasi-episcopalis*[46] in their titles. 2. All cardinals not having dioceses out of Rome are bound to reside in their titles—that is, in Rome.[47] Cardinals who are bishops or archbishops of dioceses out of Rome must reside in their respective sees.[48] The suburbicary cardinal-bishops, however,[49] are not obliged to reside in their dioceses. 3. No cardinal is allowed to leave Rome without permission from the Holy Father;[50] this applies even to cardinals who are ordinaries of dioceses, when they visit Rome.[51] 2. *Duties of Cardinals relative to the whole Church.*—I. *Sede plena—i.e.*,

[42] Soglia, vol. i., p. 259. [43] Phillips, l. c., p. 281. [44] Salzano, l. c., p. 102.

[45] Hence, cardinal priests and deacons can visit their titles and see that everything is done in accordance with the discipline of the Church—*v.g.*, see that the rubrics are observed. Moreover, they can, in their titles, make use of the pontifical insignia, give the episcopal blessing, and confer tonsure and minor orders upon members of their household, *familiaribus*. We said above, *cardinal priests and deacons;* for cardinal-bishops cannot exercise any of these rights in their titles without special permission from the cardinal-vicar. The authority of cardinals in their titles, being at present restricted to matters relating to the *servitium* of their titles and the observance of ecclesiastical discipline, can scarcely be called *jurisdictio quasi-episcopalis*. Hence, Devoti, lib. i., tit. iii., sect. ii., n. 28, says: *Nunc certum est cardinales in suis titulis non habere jurisdictionem quasi-episcopalem*. Cfr. Phillips, Kirchenr., vol. vi., pp. 287, 288; Ferraris, V. Cardinalis, art. iii., Novae Addit., n. 3. [46] Craiss., n. 710.

[47] Phillips, Lehrb., p. 211. [48] Ferraris, l. c., art. iii., n. 28, 29.

[49] Ib., n. 33. [50] Phillips, Kirchenr., l. c., p. 236. [51] Craiss., n. 710.

during the lifetime of the Pope—the cardinals form the senate,[52] chapter, or council of the Pope, and upon their advice to the most holy Roman Pontiff the administration of the universal Church depends.[53] II. *Sede vacante—i.e.*, during the vacancy of the Pontifical chair—1, the defence, and, in a measure, the administration, *ad interim*, of the Church, devolve upon them.[54] However, the jurisdiction strictly or properly belonging to the Pontiff, being attached to his person,[55] does not pass to the Sacred College.[56] Hence, the cardinals cannot, *sede vacante*, enact general laws,[57] appoint, confirm, or depose bishops.[58] 2. The faculties of the congregations or permanent committees of cardinals, being ordinary, are consequently perpetual,[59] and do not lapse with the death of the Pope; they should, however, lie dormant during the conclave as to those matters which are of greater importance, and which are, on that account,[60] usually attended to by the cardinals personally, not merely by their secretaries. 3. The right to elect the new Pope belongs exclusively to the Sacred College. Cardinals who are ordinaries of dioceses are bound to proceed to the conclave at the death of the Pope; they must return to their dioceses two months after the election and consecration of the Pontiff.[61]

495.—III. *Insignia of Cardinals.*—These consist chiefly, 1, of the red hat (*galerus rubeus*) given them by Pope Innocent IV. 2. The red cap (*birretum rubrum*) bestowed by Paul IV. 3. The sacred purple, which was the distinctive dress of the emperors; it came to be worn by all the cardinals from the time of Boniface VIII.[62] Only those cardinals who are taken from religious communities retain in their dress the color of their order. Cardinals, however,[63] of the Society

[52] Soglia, vol. i., p. 259. [53] Conc. Trid., sess. xxv., cap. i., d. R.
[54] Ferraris, l. c., art. v., n. 23. [55] Ib., n. 30. [56] Soglia, l. c, p. 261.
[57] Ib. [58] Ferraris, l. c., n. 24–27. [59] Ib., n. 43. [60] Ib., n. 45–47.
[61] Ib., n. 4. [62] Phillips, Lehrb., pp. 210, 211. [63] Craiss., n. 716.

of Jesus dress like secular cardinals. 4. Urban VIII.[64] gave cardinals the title *eminentissimus, eminentia vestra.* The coat of arms of cardinals should be surmounted by a cardinal's hat and fifteen tassels (*flocci*), but not by a secular crown, even though they are members of royal or imperial families.[65]

§ 3. *The College of Cardinals as a Corporation.*

496. The College of Cardinals, like other cathedral chapters, is a corporation,[66] and, as such, has its officers, rights, and duties. Its chief officers are: 1. The *Decanus*[67] *S. Collegii.*—The dean is the head or president of the College of Cardinals.[68] This dignity, upon its vacancy, falls, by what is styled the *jus optandi*,[69] to the oldest of the cardinals, whether he resides in the *Curia* or is absent from it *ex publica causa.*[70] 2. The *Cardinalis Camerarius Sacri Collegii.*—This dignitary administers the revenues of the Sacred College. He is assisted in his duties by several subordinate officials.[71] 3. The *Secretarius S. Collegii.*—He is chosen by ballot, and should be an Italian. His substitute (*clericus nationalis*) should be alternately selected from the French, Spanish, English, and German nations.[72] The Sacred College, being the chapter of the Roman Church, does not in every respect fall under the laws that govern other chapters. Thus, it cannot meet without the permission of the Pope,[73] while other chapters, in matters relating to themselves as corporations,[74] are convoked by their dean or president even without the consent of the bishop.[75] Cardinals living in Rome should have a yearly income of four thousand dollars (*scudi*).[76]

[64] Decretum 10 Jun., 1630.
[65] Phillips, Kirchenr., vol. vi., p. 282.
[66] Ib., pp. 233, 238.
[67] Ib., pp. 237, 238.
[68] Ib., p. 233.
[69] Ib., p. 238; cfr. Phillips, Lehrb., p. 212.
[70] Craiss., n. 718.
[71] Phillips, Kirchenr., l. c., p. 252.
[72] Ib.
[73] Ib., p. 234.
[74] Phillips, Lehrb., pp. 313, 314.
[75] Our Notes, n. 66.
[76] Phillips, Kirchenr., l. c., p. 237.

§ 4. *Consistories.*

497. *A consistory* is a meeting of cardinals in the presence of the Pontiff, for the purpose of deliberating upon or promulgating something for the good of the Church.[77] Consistories are of two kinds: 1, ordinary (*consistorium ordinarium, secretum*), at which only cardinals are present; 2, solemn or public (*consistorium solemne, publicum*), to which the cardinals proceed in great pomp, and to which prelates, ambassadors, and the like are also admitted.[78] The matters treated of in *secret* consistories are chiefly: 1. The appointment of new cardinals; sometimes the Pope announces *all* the names of those whom he wishes to appoint; not unfrequently, however,[79] he keeps the names of *some* of the appointees secret: cardinals whose names are thus kept secret are termed *riservati in petto.* 2. The appointment of bishops, erections,[80] unions, and divisions of dioceses, and the like. In *public* consistories the Sovereign Pontiff imposes the red hat upon new cardinals, treats of the canonization of saints, etc.[81] Consistories are, at present, convened *ad beneplacitum Pontificis;*[82] ordinary consistories are held, as a rule, twice a month.[83] As to the *prelati* and *curiales* of the *Curia,* see Phillips.

Art. II.

Of the Congregations of Cardinals—Sacrae Congregationes.

498. We have already shown[84] what the sacred congregations are and how they are divided. The *personnel* of the various congregations is as follows: Each of the congregations is composed of several cardinals, and, as a general

[77] Salzano, lib. i., p. 77. [78] Ib., p. 78. [79] Ib.
[80] Craiss., n. 719. [81] Ib. [82] Salzano, l. c.
[83] Phillips, Kirchenr., l. c., p. 578, and ib., § 292–319. [84] Supra, n. 75, 76.

rule, has a cardinal-prefect and a secretary, both of whom are appointed for life. A bishop *in partibus*,[85] or other prelate, generally fills the office of secretary. The precise number of cardinals attached to each congregation[86] depends at present on the will of the Pope. The *Congregatio Sancti Officii* alone has no cardinal, but the Pope, as its prefect.[87] Moreover, all congregations, save the *Congr. Concilii*, have their counsellors (*consultores*), theologians, and canonists, who are appointed by the Holy Father for life.[88] The *Congr. Episc.* had no *consultores* down to the year 1834, in which year some were also attached to this congregation.[89] The Sovereign Pontiff may be viewed under a threefold aspect:[90] 1. As Bishop of Rome; as such he is assisted by the *S. Congr. Visitationis Apostolicae*, which attends to all matters pertaining to the diocese of Rome. 2. As temporal sovereign of the States of the Church; and in this capacity the Pope is aided by the *Congr. Super Consultatione Negotiorum Status Ecclesiae*, generally called *La Sagra Consulta*. This congregation directs both the internal affairs and the external relations of the Pontifical States. 3. Finally, as head of the entire Church; and as such he is assisted by twelve standing congregations, which alone have reference to the entire Church.[91] Of these we shall now speak in detail.

§ 1. *The Congregatio Consistorialis.*

499. The scope of this congregation is to fully prepare all matters that are to be discussed and decided in consistories.[92] This committee was established by Pope Sixtus V., has from eight to twelve cardinals, and is usually presided over by the Pope himself.[93]

[85] Phillips, Kirchenr., l. c., p. 567. [86] Ib., p. 565. [87] Ib., p. 566.
[88] Ib., p. 567. [89] Ib. [90] Ib., pp. 675, 676.
[91] Salzano, lib. i., pp. 77, 78. [92] Ib.
[93] Phillips, Lehrb., p. 217, and Kirchenr., vol. vi., p. 580.

§ 2. *The Congr. S. Inquisitionis or S. Officii.*

500.—I. This congregation is charged with the investigation and suppression of current heresies. At first this congregation, as established by Pope Paul III. (1542), was but a temporary committee; its present form,[94] as a standing congregation, was given it by Sixtus V.[95] II. The powers of the S. Inquisition (*sanctum officium*), as determined by Pope Sixtus V.,[96] are chiefly: 1. "Inquirendi, citandi, procedendi, sententiandi et definiendi in omnibus causis, tam haeresim manifestam quam schismata, apostasiam a fide, magiam, sortilegia, sacramentorum abusus concernentibus"; 2, "non solum in urbe [*i.e.*, Roma] et statu temporali S. Sedi subdito, sed etiam in universo terrarum orbe, super omnes patriarchas, archiepiscopos et alios inferiores ac inquisitores."[97] III. This committee is made up of a number of *cardinals;* of a *commissarius sancti officii*,[98] who presides at trials as ordinary judge; of an *assessor sancti officii*, who reports cases under consideration to the full committee; of counsellors[99] (*consultores*), chosen by the Pope himself from among the most learned canonists and theologians; of the *promotor fiscalis—i.e.*, the prosecuting attorney;[100] of the *advocatus reorum*, or *defendant's counsel.* The General of the Dominicans, the *magister sacri palatii*, also a Dominican, and a theologian of the Order of Conventuals, are its counsellors by virtue of their position (*consultores nati*). IV. Two preparatory sittings or congregations are held weekly: one on Monday, the other on Wednesday.[101] The principal congregation or meeting of the full committee, where final decisions in matters under discussion are announced, takes place every Thursday in the presence of the Pope, who is

[94] Phillips, Lehrb., p. 217.
[95] Walter, pp. 262, 263; cfr. Salz., l. c., p. 79.
[96] Const. *Immensa.*
[97] Ap. Craiss., n. 724.
[98] Salzano, l. c.
[99] Walter, p. 263.
[100] Phillips, Kirchenr., l. c., pp. 590–592.
[101] Craiss., n. 725, 726.

the prefect of this congregation.[102] V. Formerly there existed also, in the various parts of the Catholic world, local tribunals or courts of inquisition,[103] subject to that of Rome, as also local inquisitors; but at present[104] these local tribunals are everywhere abolished, even in Spain.[105] The *S. Officium*, however, of Rome, or the Universal Inquisition, has not lost in importance, and still has charge of all that relates more directly to religion or the purity of faith; from it emanate censures of propositions and the like.[106]

§ 3. *The Congr. Indicis—The "Imprimatur" in the United States.*

501. The task of examining books and making a list (*index*) of those which, upon examination, had been prohibited, was at first entrusted to the *S. Congr. Inquisitionis.*[107] As, however, this committee, owing to its other duties, was unable to properly attend to this matter, Pope Pius V., in 1571,[108] established the *Congr. Indicis*, whose special and almost sole duty was to examine books that were to be either proscribed, emended, or permitted.[109] Books against faith and morals are at present examined and condemned almost exclusively by this congregation.[110] It is composed of several cardinals, one of whom is prefect; of the *magister sacri palatii*, the permanent assistant of the prefect; of counsellors and relators.[111]

502. *Rules of the Index (Regulae Indicis), issued by order of the Council of Trent.*—According to the ten rules of the Index, compiled at first by a committee of the Fathers of the Council of Trent and approved by Pius IV.[112] and later Pontiffs,[113] some books are prohibited *absolutely;* others but con-

[102] Phillips, l. c., p. 592. [103] Ib., p. 585. [104] Craiss., n. 723.
[105] Salzano, l. c., p. 79. [106] Ib. [107] Craiss., n. 727.
[108] Phillips, Kirchenr, vol. vi., p. 612. [109] Ib., Lehrb., p. 219.
[110] Our Notes, n. 402. [111] Phillips, Kirchenr., l. c., p. 611.
[112] Const. *Dominici*, A.D. 1564. [113] Cfr. Reiff., lib. v., tit. vii., n. 117.

ditionally or *sub clausulis*. I. These are *absolutely* forbidden: 1. All books which were already prohibited prior to the year 1515 by Popes and oecumenical councils.[114] 2. *All* the writings of heresiarchs, and those books of other heretics which treat *ex professo* of religion.[115] 3. Also obscene books,[116] and those which treat of astrology,[117] sortilegy, and the like. 4. Finally, all books placed on the *Index*, without any observations. II. The following books are prohibited *conditionally* (*sub clausulis*)—*i.e.*, until examined and approved in the proper manner (*donec approbati fuerint*):[118] 1. Those books and writings of heretics which do not treat *ex professo* of religion.[119] 2. Bibles published in the vernacular without the approbation of the Holy See,[120] or without annotations taken from the holy fathers[121] or from learned Catholic writers.[122] For other rules, see Phillips.[123] The prohibition of books by the *S. Congr. Indicis*[124] includes the reading and keeping, the defending and publishing, of such works.[125] III. The law of the *Index*[126] furthermore enacts that no book or writing of any kind shall be published without the approbation of the ordinary of the diocese where the book is published. From this we infer: 1. The approbation is to be given, not by the ordinary of the *author*, but of the *place* where the book is published.[127] 2. The law of the *Index* is more sweeping in its restrictions than the Council of Trent.[128] The latter requires the approbation of the ordinary only for books treating *de rebus sacris;* the former for *all* books or publications.[129] This law of the *Index*, however, so far as its unlimited application is concerned, seems at present to be universally in abeyance; for, even in Catholic countries,

[114] Regula I., ap. Reiff., l. c., n. 111. [115] Regula II. [116] Regula VII.
[117] Regula IX. [118] Phillips, l. c., pp. 613, 614. [119] Regula II.
[120] Regula IV. [121] Craiss., n. 737. [122] Cfr. Conc. Pl. Balt. II., n. 16.
[123] L. c. [124] Reiff., lib. v., tit. vii., n. 35, 71. [125] Konings, n. 1702.
[126] Regula X. [127] Craiss., n. 743. [128] Sess. iv., de Edit. libr.
[129] Bouix, De Jure Regular., vol. ii., pp. 146, 147.

where the *Rules of the Index* are in force, only such books at most as treat *de rebus sacris* are submitted to ordinaries before publication. We say, *at most;* for not only throughout the United States, but also in Catholic countries,[130] such books as treat *de rebus sacris* are now often published without the approbation of ordinaries. Note, it is important to know the *Rules of the Index;*[131] for the *S. Congr. Indicis* examines and passes judgment on books according to these rules.[132]

503. *Q.* Are the *Rules of the Index* and the decrees of the *S. Congr. Indicis* obligatory *sub gravi* throughout the entire Church?

A. 1. They are, *per se*, or theoretically; for various Roman Pontiffs have time and again declared the law of the Index to be binding on *all* the faithful. Thus, Benedict XIV.[133] enacts: "Indicem ab *omnibus et singulis personis, ubicunque locorum existentibus*, inviolabiliter et inconcusse observari praecipimus."[134] 2. *Per accidens;* or, practically speaking, they may cease to be of force in some countries where, by reason of general custom, based upon the indulgence of the Holy See, they are not received.[135] There are, however, eminent canonists who deny this, and hold that customs abrogating the law of the Index have never been tolerated by the Sovereign Pontiffs,[136] and have always been declared abuses by the Church.[137]

504. *Q.* Are the *Rules of the Index* in force throughout the United States?

A. 1. Speaking in general, they are not; for it would seem that in countries where heretics live, mixed up with

[130] Cfr. Craiss., n. 764.

[131] Cfr. Phillips, l. c., p. 612.

[132] Reiff., l. c., n. 99–110.

[133] *Const. Quae ad Catholicae*, ann. 1757;

[134] Ap. Phillips, l. c., p. 618, note 34.

[135] Kenrick, Mor. tract. xiii., pars. i., n. 54; cfr. ib., Primacy, ch. xxiii., § 8, p. 412.

[136] Craiss., n. 731, 763, 764.

[137] Phillips, l. c., p. 619.

Catholics,[138] the rigor of the law of the Index is considered as relaxed through the toleration of the Sovereign Pontiff. Hence, it appears certain that in the United States the prohibitions contained in the *Bulla Coenae* and the *Regulae Indicis* are overruled by custom to the contrary,[139] and therefore do not bind.[140] II. We say, *speaking in general;* for, though not *all* the rules of the Index are of force with us, *some* of them are. What rules apply to this country is thus explained by Kenrick:[141] The reading of books which treat *ex professo* of obscene things is generally a mortal sin. The same holds of the writings of Voltaire, Paine,[142] etc. 2. Books written *ex professo* against the Catholic faith cannot, as a general rule,[143] be read without a mortal sin, except by those whose duty it is to refute errors. 3. Those who read histories,[144] geographies, and the like which contain things against the faith, would seem excusable under certain circumstances. As far as possible, however, only expurgated editions of these books should be used. 4. As to Bibles in the vernacular,[145] the Protestant version cannot be used or kept at home by Catholics, nor can it be read by Catholic children in the public schools.

505. *Q.* Are books in the United States treating *de rebus sacris* to be submitted to the ordinary before publication?

A. 1. We reply in the affirmative as to Bibles published in the vernacular,[146] catechisms, prayer-books,[147] and class-books for colleges and schools.[148] 2. As regards other books there are two opinions: One holds that the Second Plenary Council of Baltimore[149] *enjoins*[150] that all books

[138] Kenrick, l. c., n. 55. [139] Cfr. our Notes, pp. 399–406.
[140] As to faculties of our bishops, form. i., n. 21, and Facult. Extr. C., n. 2; cfr. Reiff., l. c., n. 57, 58, and ib., vol. v., app. n. 22.
[141] L. c., n. 57. [142] Ib., n. 56. [143] Ib., n. 58. [144] Ib., n. 59. [145] Ib., n. 60.
[146] Cfr. Conc. Pl. Balt. II., n. 16. [147] Ib., n. 502, 503.
[148] Ib., n. 496, 497. [149] Ib., n. 502–504. [150] Ita Konings, n. 1707, quaer. 2.

treating *de rebus sacris* should be submitted to ordinaries before publication; the other, that the fathers of Baltimore[151] merely *counsel* it.[152] As a matter of fact, books on religion are not unfrequently published without the approbation of ordinaries by authors whose faith and piety are above all suspicion. This would seem to point to the abeyance of the law, if, indeed, it was really enacted by the Council. As to the censures incurred for violating the Rules of the Index, see Craisson[153] and the *Constitutio Apostolicae Sedis.*[154]

§ 4. *The Congregatio Concilii.*

506.—I. The Council of Trent left to the Sovereign Pontiff the care of enforcing and interpreting its enactments[155] wherever anything should be met with requiring explanation or definition.[156] For this purpose Pope Pius IV. (1564) established the *Congr. Cardinalium Concilii Tridentini Interpretum.*[157] II. This committee had, in the beginning, only power to see to the execution or observance of the Tridentine disciplinary laws—*i.e.*, decrees on reform.[158] It was empowered by Pope Pius V. to interpret definitively the Council of Trent in all cases where the congregation was not in doubt as to the meaning of the Council.[159] Finally, Sixtus V. gave this committee *general* powers to interpret the Tridentine decrees on reformation. Now, the decrees of Trent include, so to say, the entire code of ecclesiastical jurisprudence. Hence, this congregation has power to explain authoritatively all canon law; moreover, in matters of discipline, it has not only judicial but legislative authority

[151] L. c., n. 503.

[152] This second opinion rests merely on the argument that the Council (n. 503) does not *directly*, but only, if at all, *inferentially*, enact the law in question. The first opinion seems therefore safer.

[153] N. 760.

[154] N. ii., et Craiss., n. 1641.

[155] Salzano, lib. i., p. 85.

[156] Conc. Trid., sess. xxv., cap. xxi., d. R.

[157] Phillips, Lehrb., p. 219.

[158] Cfr. ib., p. 220.

[159] Cfr. ib., Kirchenr., l. c., pp. 625–636.

over the entire Church,[160] being empowered to make such laws as are deemed opportune."[161] We said above, *Tridentine decrees on reformation;* for the interpretation of the Tridentine decrees *in matters of faith* is reserved to the Pope.[162] III. *Personnel of this Congregation.*—It has a greater number of cardinals than the other congregations. A prelate, generally an archbishop in partibus, is its secretary. Many theologians and canonists are attached to it as counsellors.[163] This committee has these three sub-committees: 1. *The Congr. Visitationis liminum*, which receives the reports on the state of dioceses, both as sent to Rome or as made personally by bishops when visiting Rome.[164] 2. *The Congr. particularis super revisione synodorum provincialium.* Both these sub-committees are presided over by the cardinal-prefect of the full committee (*Congr. Concilii*), and have the secretary also of the latter.[165] 3. *The Congr. particularis super residentia Episcoporum.*

§ 5. *The Congregatio de Propaganda Fide, its relations to the United States.*

507. This congregation was established by Gregory XV.[166] and consists of a number of cardinals, one of whom acts as prefect; of a secretary, who is always one of the most esteemed prelates; of the *assessor sancti officii;* of twenty-four counsellors and many subaltern officials.[167] This congregation has entire and exclusive charge of the ecclesiastical affairs of missionary countries. New missions are established and districted by it. As a rule,[168] a mission is first entrusted to a single priest, as *præfectus apostolicus.* When the mission is farther advanced, a *vicarius apostolicus* is appointed; he is made bishop or archbishop *in partibus.*

[160] Phillips, l. c., pp. 634, 635.
[161] Craiss., n. 769.
[162] Ib., n. 769.
[163] Phillips, l. c., p. 633.
[164] Ib., p. 638.
[165] Ib.
[166] Const. Inscrutabili, 22 Jan., 1622.
[167] Phillips, vol. vi., p. 668.
[168] Ib., pp. 669, 670; cfr. Craiss., n. 780.

Sometimes a fixed place of residence is assigned him; yet a diocesan organization, canonically complete, is not thereby effected. Hence, such a bishop remains an auxiliary bishop of the Pope. For that reason, also, missionary bishops are not appointed in consistory, but on the nomination of the Propaganda.[169] In the United States the bishops of the province recommend to the Propaganda three candidates when a bishopric becomes vacant.[170] Countries are considered missionary and remain under the Propaganda[171] so long as the organization of their dioceses is incomplete[172]—*i.e.*, not in every respect conformable to canon law—*v.g.*, if chapters do not exist;[173] in other words, until canon law fully obtains in them.

508. *Powers of the Propaganda.*—Dioceses may be incomplete as to their organization chiefly in two ways: 1, some dioceses are as yet in the course of organization[174]—*v.g.*, dioceses in the United States; 2, others which, though once fully organized, became disintegrated by the inroads of schism or heresy in countries once Catholic. Wherever the organization or form of government of a diocese is not and cannot be made *entirely* conformable to canon law,[175] its administration devolves directly on the Pope, who has *jurisdictio ordinaria* in every diocese.[176] Now, the Sovereign Pontiff manages the affairs of missionary countries through the *Congr. Prop. Fidei.* Hence, this committee has exclusively the direction of ecclesiastical affairs respecting missionary countries. We say, *exclusively;* that is, the Propaganda is for missionary countries what all the other congregations combined are for countries where dioceses are perfectly organized, having chapters, etc. While, therefore, ecclesiastical matters from canonically-organized dio-

[169] Phillips, vol. vi., p. 670.
[170] Conc. Pl. Balt. II., n. 106.
[171] Phillips, Lehrb., p. 223.
[172] Cfr. ib., § 126, p. 235.
[173] Cfr. Phillips, Kirchenr., l. c., p. 663.
[174] Ib., Lehrb., p. 235.
[175] Ib.; cfr. ib., p. 223.
[176] Cfr. ib., Kirchenr., l. c., p. 663.

ceses must be referred to the respective congregations having charge of the specific affair, those from missionary countries must be referred *exclusively* to, and are arranged *solely* by, the Propaganda. Hence, of this congregation it is said: *Caeteras congregationes habet in ventre*[177]—*i.e.*, for missionary countries the Propaganda is the *sole* congregation, combines in itself the powers and discharges the duties or functions not merely of several, but of all the other congregations; so that while the priests and bishops of countries where canon law obtains must refer matters to the respective congregations, the priests and bishops of missionary countries must, *in all cases*, address themselves to the Propaganda, but to no other congregation. Thus, this committee is for missionaries the exclusive court of appeal in all cases of dispute; it alone solves questions proposed to the Holy See by missionaries. *Observation.*—From what has been said we infer: All priests or bishops in the United States having recourse to Rome, whether for the sake of appealing—*v.g.*, from alleged acts of injustice on the part of bishops—or by way of asking for faculties or decisions in controverted matters—in a word, in all cases—must address themselves to the Propaganda, and to no other congregation.

509. In the seminary attached to the Propaganda[178] young men of every nationality are educated for the various missions of the world. In the printing-office attached to the Propaganda books are published in every language for the use of missions. The full committee (*Congr. generalis*) meets once a month,[179] on a Monday. The meeting is generally held in the Propaganda; sometimes in the presence of the Pope. The sub-committee, composed of the cardinal-prefect, secretary, and several subaltern officials,

[177] Phillips, l. c., p. 663.

[178] This seminary is named *Collegium Urbanum*, after Pope Urban VIII., who established it. Craiss., n. 781.

[179] Phillips, l. c., vol. vi., p. 668.

meets once a week in the house of the cardinal-prefect; it attends to matters of minor importance, reserving those of a graver character to the full committee.[180] Pius IX.[181] divided the Propaganda into two parts: one, *pro ritu latino;* the other, *pro ritu orientali.*[182]

§ 6. *The Other Congregations.*

510.—I. *The Congr. super Negotiis Episcoporum et Regularium.*—I. Though originally two distinct congregations,[183] the *Congr. Episcoporum* and the *Congr. Regularium* were soon united into one, probably[184] already by Sixtus V.[185] II. *Powers of this Congregation.*—It has charge of all matters whatever relating to bishops (*omnia negotia episcoporum*) or religious communities (*negotia regularium*); it settles disputes between bishops and their subjects, as also between bishops and religious communities.[186] It has, in fact, jurisdiction in all matters, save those which relate to dogmas or require the interpretation of the Council of Trent;[187] hence it is termed *congregatio universalis.* Its personnel is similar to that of other congregations. III. *Mode of procedure.*—In deciding cases referred to it[188] this committee proceeds extra-judicially, and is therefore, in a certain sense, a court of equity rather than a court of justice.[189] When a question of dispute—*v.g.*, between a bishop and a parish priest—is brought before this committee, its usual course is to write to the bishop against whom the complaint is lodged, or, if he refuses to furnish a satisfactory report, to the metropolitan, to a neighboring bishop, or also to other trustworthy persons, for a statement of the case. Upon receipt of such statement the committee proceeds to discuss

[180] Phillips, vol. vi., p. 668.
[181] In 1862, Jan. 6.
[182] Craiss., n. 782.
[183] Ib., n. 770.
[184] Phillips, vol. vi., p. 642.
[185] Const. Immensa Aeterni, A.D. 1587.
[186] Phillips, l. c., pp. 645, 646.
[187] Ib., pp. 640, 643.
[188] Ib., p. 644.
[189] Salzano, lib. i, p. 86.

and settle the case.[190] The decision reached is communicated to the bishop,[191] either directly or through some neighboring prelate. In matters relative to religious communities the procurator-general of the respective religious order is applied to for information as to the case.

511.—II. *The Congr. Sacrorum Rituum.*—This committee, which was established by Sixtus V.,[192] is empowered: 1. To prevent anything superstitious from getting into the ceremonies or liturgy of the Church. 2. To bring about uniformity of worship by enforcing the ordinance of Pius V. —to wit: That the ceremonial of the Roman Church,[193] especially as regards the Mass, the office, and the administration of the sacraments, should be observed by all the other churches of Christendom. 3. Hence, to correct the missal, breviary, pontifical, ritual,[194] and ceremonial. 4. To conduct the proceedings respecting the canonization of saints.[195]

512. *Q.* What is the force of the decrees and decisions of the *Congr. S. Rituum?*

A. There are two kinds of decrees: some, and by far the greater number, are *particular*, being in the form of answers to individuals or particular churches; others are *general*, either *expressly*—*v.g.*, when addressed *urbi et orbi*[196]—or *aequivalenter*—*v.g.*, when explanatory of general rubrics: *e.g.*, those in the beginning of the Missal or Breviary.[197] Now, all decrees which are expressly general are obligatory everywhere; decrees which are general *aequivalenter* also bind universally, provided they are *declarationes comprehensivae*.[198] As to particular decrees, it is certain that they have the force

[190] Salzano, lib. i., p. 86.
[191] Phillips, l. c., pp. 646, 647.
[192] *Bulla Immensa Aeterni;* cfr. Bened. XIV., *De Servorum Dei Beatif.*, etc., cap. xvi.–xix.
[193] Salzano, l. c., p. 87.
[194] Phillips, l. c., p. 654.
[195] Ib.
[196] Craiss., n. 775; cfr. supra, n. 77, 78, 81.
[197] O'Kane, Notes, n. 29.
[198] Cfr. supra, n. 79.

of law for those for whom they were given; but are they also binding on *all*—*i.e.*, are they obligatory also *in casibus similibus?* Here a distinction must be made between those particular decrees which, though particular in form, are nevertheless[199] general and applicable everywhere, in substance and intent, and those which are particular, in an exclusive manner—*i.e.*, not only in form, but also in intent: *v.g.*, those that imply a dispensation or privilege, or are given on account of special local circumstances. Now, it is certain that the latter are binding[200] only in the particular cases for which they are made; whether the former are universally binding is a disputed question. St. Liguori[201] seems inclined to the opinion that they are not; but he afterwards modifies this opinion by adding that, when such decrees are universally known, and are thus, in fact, promulgated by long usage and the constant reference of authors to them, they are binding on all.[202] Note, however, it is certain that, when particular decrees are solemnly promulgated to the entire Church, they become binding on all.

513.—III. *The Congr. Indulgentiarum et Reliquiarum* was made a standing congregation by Clement IX.[203] Its duty consists, 1, in preventing abuses in the matter of indulgences, etc.; 2, in authenticating relics, especially those taken from the Catacombs of Rome.[204] For the remaining congregations, see Craisson.[205]

514. *The Congregations in general.*—In conclusion, we add a few words on the rights, etc., common to all the congregations. I. All congregations have *jurisdictio ordinaria*[206] in their respective spheres—*i.e.*, in matters entrusted to their

[199] Cfr. O'Kane, l. c., n. 29.
[200] Cfr. Konings, n. 173, quaer. 4.
[201] Lib. i., n. 106, quaer. 2.
[202] O'Kane, l. c., n. 35.
[203] Const. *In Ipsis*, 1669 (B. M., tom. vi., p. 283).
[204] Phillips, l. c., p. 661.
[205] L. c., n. 783 seq.
[206] Phillips, l. c., p. 569.

cognizance—by their mandates or commissions; nay, they constitute one and the same tribunal with the Sovereign Pontiff; hence, there is no appeal from them to the Pope.[207] They resemble, in their powers, the vicar-general of a diocese, excepting in this: their jurisdiction continues during the vacancy of the Papal chair,[208] while that of the vicar-general lapses, *sede vacante*. II. *Forms used by the various Congregations.*—The phrase *et amplius* is equivalent to "et causa amplius non proponatur"; the clause "*et non concedatur*" signifies that a new trial or hearing is not to be granted; the word *dilata* means the question is as yet to be examined; *relatum*, that the *S. Congr.* refuses to take up the matter.[209] III. In regard to matters not of a contentious nature[210] the rule is that those of minor importance are not referred to the full committee (*congr. plena*), but are decided by the prefect and secretary, or by the secretary alone. In grave cases, which are decided by the full committee, the secretary of the respective committee presents to the committee a condensed or summarized statement of the entire case (*summaria precum*), and a cardinal, usually named *ponens*, is, as a rule, designated to report on the case.[211] In regard to applications or requests addressed to any of the congregations,[212] the rule is that letters should not be sent directly by mail, but must be presented in the office of the secretary of the respective congregation by an agent (*agens*) or other person, who will also call for the answer.[213]

[207] Craiss., 785. [208] Phillips, l. c., p. 570. [209] Craiss., Elem., n. 382.

[210] Phillips, l. c., p. 573. *Causae contentiosae* cannot be settled by any of the *congr.* except by consent of both parties to a suit, or at the express command of the Pope. By *causae contentiosae* are meant those where a regular trial is required. (Phillips, l. c., p. 571)

[211] Craiss., Elem., l. c. [212] Ib. [213] Phillips, l. c., p. 573

Art. III.

Of the Roman Tribunals.

515. The tribunals of the Roman *Curia* are of three kinds: 1, *tribunalia justitiae;* 2, *tribunalia gratiae;* 3, *tribunals* for the expedition of Papal letters or documents. I. *Tribunals of justice* (*tribunalia contentiosa*, *curia justitiae*). 1. The *Rota Romana*, so named[214] because its twelve *auditores* or judges sit in a circle (*rota*), and vote by rotation (*rotatio*) or turns, four only at a time.[215] Its jurisdiction, as regards the universal Church, is at present greatly restricted,[216] being confined to those matters which are specially committed to it by the Pope.[217] 2. The *Reverenda Camera Apostolica* has charge of the Papal finances,[218] and, in certain cases, also exercises contentious jurisdiction even in regard to the entire Church.[219] 3. The *Signatura Justitiae.*[220]

516.—II. *Tribunals of grace* (*tribunalia gratiosa*, *curia gratiae*). 1. The *Dataria*—so called from the fact that Papal concessions or favors were properly *dated*,[221] and the *date* registered by an official of the Pontifical court[222]—is a tribunal from which are issued dispensations *pro foro externo* in matters reserved to the Pope.[223] Hence, it is necessary to recur to this tribunal for dispensations in *public* impediments of marriage and in *public* irregularities.[224] A cardinal is generally at the head of this tribunal; he is named *Prodatarius*, because the datary is not properly a cardinal's office. Note.—*Papa, non datarius concedit gratias.*[225] 2. The *Sacra Poenitentiaria* has at its head a cardinal as *poenitentiarius major*. It is, moreover, composed of *officiales majores*

[214] Phillips, l. c., p. 484.
[215] Ib., p. 494.
[216] Phillips, Lehrb., p. 224.
[217] Craiss., n. 798.
[218] Walter, § 128, p. 265.
[219] Phillips, l. c., p. 224.
[220] Ib., p. 225.
[221] Walter, pp. 264, 265.
[222] Craiss., n. 791.
[223] Phillips, Lehrb., p. 226.
[224] Craiss., n. 791.
[225] Phillips, Kirchenr., vol. vi., p. 385.

and *minores*, of *poenitentiarii minores*, or confessors selected from the various religious orders to hear confessions at the three patriarchal churches of Rome—namely, St. Peter's, St. John Lateran, and St. Mary Major.[226] Petitions for dispensations *in foro interno*[227] must be addressed to this tribunal. Both the penitent and the confessor may apply directly and by mail to the *poenitentiarius major*. Letters may be written in the vernacular.[228] The faculties of the *poenitentiarius major quoad forum internum*[229] do not lapse by the death of the Pontiff. 3. The *Signatura Gratiae*.[230]

517.—III. *Tribunals of the Curia for the expedition of Papal letters or documents.* 1. The *Roman Chancery* (*cancellaria apostolica*). The Roman Chancery is the oldest tribunal of the court of Rome. Through it are issued letters or acts relative to affairs discussed and arranged in consistories—viz.,[231] appointments of archbishops, bishops, abbots, and other dignitaries.[232] It expedites, at present, only those Pontifical letters which are made out in the form of bulls. It is presided over by the cardinal of *San Lorenzo in Damaso*, who is assisted by a director of chancery (*regens cancellariae*) and other subaltern officials. The cardinal-chancellor is called *vice-cancellarius*, probably because the chancellorship is not properly a cardinal's office;[233] his jurisdiction lapses with the death of the Pope, when also the seal of the chancery is broken in the presence of the cardinals.[234] The mode of procedure of this tribunal is regulated in strict accordance with the seventy-two *regulae cancellariae*.[235] 2. The *Secretaria Brevium* despatches Papal letters or instruments *in forma brevis*.[236] In general, all dispensations, favors, absolutions, and the like, granted by the Pope and not issued directly by the datary or the Sacred Congregations, though granted through

[226] Craiss., n. 793. [227] Phillips, l. c., p. 227. [228] Craiss., n. 795.
[229] Ib., n. 797. [230] See Phillips, l. c., p. 226.
[231] Walter, l. c., p. 264. [232] Craiss., n. 787. [233] Phillips, l. c., p. 227.
[234] Craiss., n. 789. [235] Phillips, l. c. [236] Ib.

them, are expedited, *in forma brevis*, by the secretary of briefs whenever such letters are not to be made out *in forma bullae*.[237] The *Secretarius Brevium* is always a cardinal.[238] 3. The *Secretaria Status*, at whose head stands the Cardinal Secretary of State, is the Ministry of Exterior of the States of the Church; it is also the tribunal through which the Pope treats of ecclesiastical affairs with the civil powers.[239] 4. The *Secretaria Memorabilium* for civil favors.[240]

SECTION II.

Ministers of the Sovereign Pontiff "Extra Curiam."

518. Legates, nuncios, vicars and prefects apostolic, commissaries, etc., are, as we have seen,[241] Pontifical ministers or assistants *extra curiam Romanam.*

ART. I.

Of Legates and Nuncios.

519. *Q.* How many kinds of legates were there *formerly?*

A. Three: 1. *Legati missi*, or those sent abroad for some particular and temporary affair. 2. *Apocrisiarii* or *responsales—i.e.*, such as resided at the courts of princes permanently,[242] and had general and permanent powers in ecclesiastical matters; their legateship was permanent. 3. *Vicarii apostolici—i.e.*, bishops of countries selected by the Sovereign Pontiff to act as his legates in their respective districts.[243]

520. *Q.* How many kinds of legates are there *at present?*

A.—I. Speaking in general, there are two kinds: 1. *Legati nuntii et non judices—i.e.*, those who have no *jurisdictio*

[237] Craiss., n. 790. [238] Ib. [239] Phillips, l. c., p. 228. [240] Ib.
[241] Supra, n. 486. [242] Soglia, vol. i., p. 247. [243] Cfr. Craiss., n. 803.

ordinaria, but are, *v.g.*, sent to exercise a *nudum ministerium*, or act as ambassadors of the Holy See in a diplomatic capacity only. 2. *Legati judices—i.e.*, those who have *jurisdictio ordinaria* in their district.[244] II. Speaking in particular, the *legati judices* are of three kinds: 1. *Legati a latere*, who are always cardinals; they are legates of the first rank. At present they are sent on extraordinary occasions only,[245] and receive their instructions directly from the Pope. 2. *Legati missi* or *nuntii apostolici*, who are not, as a general rule, cardinals, but titular archbishops; they are legates of the second rank, and are sent[246] to reside permanently at the courts of sovereign rulers.[247] At present these legates are, as a rule, *legati non judices*, having no jurisdiction in the internal ecclesiastical government of their province,[248] but acting merely as diplomatic agents of the Holy See.[249] They are called *nuncios* when they actually reside at the court of the rulers to whom they are accredited; *internuntii*[250] if they reside elsewhere or act only provisionally. A nuncio, acting as such, even after being elevated to the cardinalate, is named *pronuntius*.[251] Nuncios are sometimes commissioned *cum potestate legati a latere*. 3. *Legati nati*, or legates by office, are those to whose see or ecclesiastical dignity the office of legate is attached.[252] The Archbishops of Canterbury and York in England, the Archbishop of Rheims in France, etc., were *legati nati*.[253] Since the fifteenth century, however, the powers of the *legati nati* seem to have become entirely extinct.[254] At present they retain but the name or title;[255] the office itself no longer exists.[256] In Sicily the

[244] Reiff., lib. i., tit. xxx., n. 4. Parisiis, 1864.
[245] Walter, l. c., p. 270.
[246] Phillips, Lehrb., p. 233.
[247] Ib., p. 229.
[248] Cfr. Craiss., n. 810, 811, 812.
[249] Walter, pp. 270, 271.
[250] Craiss., n. 806.
[251] Phillips, l. c., p. 233.
[252] Salzano, lib. ii., pp. 108, 109.
[253] Reiff., l. c., n. 10.
[254] Soglia, vol. i., p. 262.
[255] Phillips, l. c., p. 235.
[256] Craiss., n. 807.

king himself was *legatus natus* of the Holy See,[257] and exercised his legatine rights through a special tribunal. This tribunal,[258] named *Monarchia Sicula*, was abolished by Pope Pius IX. in 1867.[259]

521.—I. *Rights Common to all Legates.*—According to the principles of canon law, all *legati judices*[260] have ordinary jurisdiction in their district, named province. Hence, their legateship and authority do not, as a rule,[261] expire with the death of the Pontiff by whom they were appointed, especially as they are not *legati Papae* but *Sedis Apostolicae*, which never dies.[262] Legates, by virtue of their *jurisdictio ordinaria*,[263] have, 1, the power of supreme inspection in regard to the ecclesiastical affairs of their province. They are bound to inform the Sovereign Pontiff of all matters of importance bearing on the welfare of the churches of their district.[264] 2. They can enact permanent statutes—*i.e.*, such as will remain in force even after their legateship has expired.[265] 3. Prior to the Council of Trent, they could take cognizance of causes of their provincialists, even in the first instance. At present[266] they can decide such causes only (*a*) on appeal from a definitive or quasi-definitive sentence; (*b*) when the ordinary of the place has neglected to terminate the cause within two years from the beginning of the suit or litigation.[267] 4. Canonists usually sum up the rights of legates[268] by saying that they can perform in their province not only what a bishop can do in his diocese, but even what the Pope can accomplish,[269] excepting reserved matters. This principle, however, has received various modifications. We said above, *according to the principles of canon law;* for,

[257] Walter, p. 270.
[258] Phillips, l. c., § 125.
[259] Salzano, lib. ii., pp. 110, 111, and lib. i., p. 110.
[260] Phillips, l. c., § 122.
[261] Ib., § 123.
[262] Reiff., lib. i., tit. xxx., n. 11, 12, 13.
[263] Soglia, l. c.
[264] Reiff., l. c., n. 14.
[265] Phillips, l. c., § 122.
[266] Cfr. Conc. Trid., sess. xxiv., cap. xx., d. R.; Reiff., l. c., n. 16, 17.
[267] Reiff., ib., n. 18.
[268] Phillips, l. c., p. 230.
[269] Cfr. Craiss., n. 809.

at present, the powers of legates are determined by apostolic letters—*i.e.*, by the Pontifical mandate or commission given the newly-appointed legate[270]—rather than by the principles of canon law on this head.[271] Legates cannot, without authority from the Pope, exercise jurisdiction in the *causae majores*.[272] II. *Rights and powers peculiar to legates a latere.*—Wherever they are, the jurisdiction of all other legates is suspended; they can confirm the election of archbishops, bishops, and exempt prelates, appoint to benefices or parishes.[273]

522. *Q.* What are the laws of the United States in relation to ambassadors?

A.—1. Ambassadors are exempted absolutely from all allegiance and responsibility to the laws of the country to which they are deputed.[274] 2. Their persons are deemed inviolable. 3. An ambassador, while he resides in the foreign state, is considered as a member of his own country; and the government he represents has exclusive cognizance of his conduct and control of his person.[275] 4. The attendants of the ambassador and the effects in his use are equally exempt from foreign jurisdiction. 5. A person who offers violence to ambassadors, or is concerned in prosecuting and arresting them, is liable to imprisonment for three years and to a fine at the discretion of the court.[276]

523. *Q.* Are these laws applicable to Papal legates?

A. A Papal legate may be sent to represent the Holy See, either in a diplomatic capacity only or in matters purely ecclesiastical. In the latter case he would be considered as an ordinary resident of the country; in the former he would rank with other ambassadors, and be entitled to equal rights with them.

[270] Phillips, l. c., § 122.
[271] Cfr. Devoti, lib. i., tit. iii., n. 30, 31; Craiss., n. 809.
[272] Reiff., l. c., n. 23.
[273] Phillips, l. c., § 123
[274] Kent, vol. i., p. 38.
[275] Ib., p. 39.
[276] Ib., p. 182.

Art. II.

Of Apostolic Vicars, Prefects, Commissaries, and Prothonotaries.

524. *Vicars and Prefects Apostolic.*—There is a material difference between the vicars-apostolic of antiquity and those of the present day.[277] The former corresponded to the *legati nati* of later times; the latter are those who are deputed by the Pontiff to exercise the pastoral care in certain churches or districts, *not in their own name, but that of the Pope.*[278] The appointment of apostolic vicars is based on the principle that the Pope, as bishop of the whole world, or as *ordinarius* of the entire Church, has the direct ecclesiastical management of all those places and dioceses where the ecclesiastical régime is not organized in perfect conformity with canon law.[279] Hence, vicars-apostolic are appointed, 1, for missionary countries where as yet dioceses are merely in the course of formation—*v.g.*, in the United States; 2, for the Catholic portion of the community in countries that have fallen from the faith.[280] We said above, *in perfect conformity with canon law;* for the Holy See—*i.e.*, the Propaganda, which is, in this respect, the representative of the Pope—retains the direct management of these places, not only until dioceses are simply formed (as in the United States) or re-established, but until they are all, without exception, *perfectly* organized—*i.e.*, placed on an *entirely* canonical footing, having chapters, etc.; in other words, until canon law *fully* obtains. So long, therefore, as the organization of a diocese is in *any way* abnormal—*i.e.*, not conformable to canon law—the Propaganda has direct charge of it.[281] 3. Besides, vicars-apostolic are also appointed, in

[277] Craiss., n. 815.
[278] Ib., n. 815.
[279] Phillips, Lehrb., § 126; cfr. Walter, § 132.
[280] Phillips, l. c.
[281] Ib.

urgent cases, where the administration of a diocese fully organized becomes temporarily disordered—*v.g.*, by the absence, captivity, sickness, and the like of its bishop.[282] As the Propaganda has the immediate control of all places having diocesan organizations, incomplete or abnormal, or disordered, it is placed over all vicars-apostolic, whether they be simple priests under the title of prefects, or bishops *in partibus*, or ordinary bishops in the capacity of apostolic delegates. Hence, also, the bishops of the United States and of Ireland are not preconized in consistory, but proposed to the Pope by the Propaganda.[283]

525. *Apostolic Commissaries* (*commissarii apostolici, delegati Papae*).—They are those persons whom the Holy See commissions to take cognizance of and arrange certain matters —*v.g.*, vicars-general, to whom the execution of matrimonial dispensations is committed by the Holy See.[284] The Holy See, as a rule, selects as agents or commissaries only ecclesiastical dignitaries—canons, vicars-general, and superiors of religious communities. Note.—Apostolic delegates are appointed either directly by the Holy See (*delegati ab homine*) or by the *jus commune—v.g.*, by the Council of Trent (*delegati a jure*).[285] As is evident, the commissaries of which we here speak are *delegati ab homine*, not *a jure*.

526. *Apostolic Prothonotaries* (*protonotarii apostolici*).—These are of three kinds: 1. *Protonotarii participantes* or *de collegio;* these alone have the full rights of the prothonotaryship. 2. *Protonotarii supernumerarii* or *ad instar participantium;* they have nearly all the rights, so far as honors are concerned (*jura honorifica*), of the *participantes*. Hence, they may wear the dress of prelates (*habitus praelatitius*) —*i.e.*, the cassock (*subtana*) and mantle (*mantellettum*) of violet, and the rochet; they may also celebrate pontifically,

[282] Phillips, l.c., p. 236.

[283] Ib., l. c.; cfr. ib., Kirchenr., vol. vi., pp. 746, 748.

[284] Craiss., n. 817.

[285] Reiff., lib. i., tit. xxix., n. 33, 34.

though only with the consent of the ordinary. Prothonotaries *participantes* may celebrate private Masses, like prelates, both in and out of Rome. But prothonotaries *ad instar* cannot, in celebrating private Masses, distinguish themselves from simple priests. This is certain at present, as is evident from the following words of the *Const. Ap. Sedis Officium*, issued by Pope Pius IX. in 1872, regarding prothonotaries *ad instar:* "In Missis privatis quoad indumenta, caeremonias, ministros, altaris ornatum, cereorum lucentium numerum, protonotarii ad instar a simplici sacerdote non differant, adeoque nullum prorsus ex ornamentis Pontificalibus pro Missa solemni tantum sibi indultis adhibeant, atque ab omnibus et singulis ritibus in ipsa Missa solemni sibi vetitis penitus abstineant" (Const. cit., § 18, ap. De Herdt, Praxis Pontif., tom. iii., p. 509). 3. *Protonotarii honorarii* are of a grade inferior to the foregoing.[286]

[286] Craiss., n. 818.

CHAPTER III.

OF PATRIARCHS, PRIMATES, AND METROPOLITANS.

ART. I.

Patriarchs.

527. *Patriarchs* (*patriarchae*) are bishops who preside not merely over one diocese or province, but over several provinces or districts.[1] The dignity itself of patriarchs dates back to the apostles; the name came into use only from the time of the Council of Chalcedon.[2] *Rights formerly possessed by Patriarchs.*—They had power chiefly, 1, to consecrate metropolitans and give them the pallium; 2, to assemble and preside at patriarchal or national[3] councils; 3, to receive appeals from the sentence of metropolitans. These rights may be summed up thus: The jurisdiction exercised by patriarchs over metropolitans was similar to that exercised in turn by metropolitans over their suffragan bishops.[4] The four great patriarchates of the Eastern Church—namely, of Alexandria, Antioch, Constantinople, and Jerusalem—having fallen into schism and heresy, have long ago become extinct.[5] The Holy See, however, in order to preserve the memory of these patriarchates, still creates titular patriarchs of these sees,[6] who reside in Rome; they have only the title of patriarchs, but no jurisdiction, excepting, however, the Patriarch of Jerusalem, who was sent to his see by Pope Pius IX., and occupies it at present.[7]

[1] Craiss., n. 820. [2] Soglia, vol. i., pp. 267, 268. [3] Ib., p. 273.
[4] Craiss., n. 822. [5] Phillips, Lehrb., p. 239. [6] Ib., p. 240.
[7] Craiss., n. 821.

Besides these, there are still in the Oriental Church several actual patriarchs in communion with the Holy See. Thus, the Chaldeans, Melchites, Maronites, Syrians, and Armenians, who are united with the Catholic Church,[8] have their patriarchs, to whom the Holy See usually grants faculties similar to those enjoyed by the patriarchs of old.[9] The Roman Pontiff is the patriarch of the Western or Latin Church. Besides, there are in the Latin Church the patriarchs of Lisbon, Venice, and the West Indies; they are called *patriarchae minores*, and have only the title, not the jurisdiction, of patriarchs.[10] The patriarchate itself is not of divine but of ecclesiastical institution.[11]

Art. II.

Primates.

528. By *primates* (termed *primates* in the Latin, *exarchi* in the Greek Church) are meant at present those who are placed over several metropolitans.[12] Primates formerly had the right to convene national councils and receive appeals from the sentence of metropolitans.[13] These privileges have lapsed, and, where primates still exist, they merely retain the name or title,[14] not the jurisdiction formerly attached to the primateship.[15] Salzano, however, observes that even at the present day primatial jurisdiction is vested in the Primate of Hungary and in the Archbishops of Toledo and Armagh. In the United States, the Archbishop of Baltimore, by virtue of the *praerogativa loci*,[16] affixed to his see, occupies the first seat in all councils, meetings, and the like. This privilege, as is evident, is simply one of honor,

[8] Walter, pp. 303, 304. [9] Soglia, l. c., p. 274. [10] Walter, pp. 303, 304.
[11] Soglia, l. c., p. 272. [12] Craiss., Man., n. 826; cfr. Craiss., Elem., n. 392.
[13] Phillips, l. c., p. 240. [14] Soglia, l. c., p. 275.
[15] Salzano, lib. ii., pp. 126, 127; cfr. Walter, p. 304.
[16] Decr., Aug. 15, 1858; ap. Conc. Pl. Balt. II., app. xxx., p. 343.

not of jurisdiction, and includes no primatial rights whatever.[17]

Art. III.

Metropolitans.

529. A *metropolitan* (*metropolitanus*, *metropolita*, *archiepiscopus*) is the bishop of a metropolis or chief city of a province, who presides over an entire province.[18] Metropolitans are also named archbishops, although, strictly speaking, the former are those who have suffragan bishops, while the latter may not have any.[19] Every metropolitan, therefore, is rightly called an archbishop; but not every archbishop is a metropolitan.[20] The dignity of metropolitans, though not of divine institution, is nevertheless very ancient, and, according to a highly probable opinion, dates back to the apostles themselves.[21] Thus, many canonists hold that Titus and Timothy were created metropolitans by St. Paul; the former of Crete, the latter of Asia.[22] *Powers and Rights of Metropolitans.*—1. *Formerly* the jurisdiction of metropolitans was very extensive.[23] Suffragan bishops could do nothing of importance without their consent. They had the chief voice or part in the election of the bishops of their provinces,[24] etc. These ample powers came to be greatly restricted in later times. 2. *At present* the metropolitical jurisdiction, speaking in general, extends (*a*) over suffragans, (*b*) over the subjects or dioceseners of suffragans. We say, speaking in general; what these rights are in particular we shall now examine.[25]

530. *Q.* What are, at present, the rights of metropolitans *over their suffragan bishops?*

[17] Our Notes, n. 34.
[18] Soglia, l. c., p. 276; our Notes, n. 78, 79.
[19] Salzano, l. c., p. 127.
[20] Ferraris, V. Archiep., art. i., n. 3–5.
[21] Craiss., n. 831.
[22] Cfr. Conc. Pl. Balt. II., n. 78.
[23] Ib., 79–81.
[24] Craiss., n. 832.
[25] Phillips, Kirchenr., vol. vi., p. 821.

A. Chiefly these:[26] 1. To convoke provincial councils every third year.[27] 2. To make the visitation of their provinces; but at present they can do so only when authorized by provincial councils. As provincial councils are but rarely held,[28] these visitations also have come to be discontinued. 3. To urge suffragans to comply with their episcopal duties, especially that of residence. 4. Their judicial power was restricted by the Council of Trent,[29] so that at present the more grave criminal charges against bishops (*causae criminales majores*) can be decided by the Sovereign Pontiff only; the less[30] (*causae criminales minores*), in provincial councils. Metropolitans therefore can, at most, take cognizance of *civil* causes of suffragans.[31]

531. *Q.* What are, at present, the rights of metropolitans *in relation to the subjects of their suffragans?*

A. Metropolitans have jurisdiction over the subjects of their suffragans chiefly in three cases:[32] on appeal, during visitation, and by devolution.[33] I. *On Appeal* (*in appellatione*).—Thus, the subjects of suffragans may appeal to the archbishop in all grievances whatever—*i.e.*, not only from a juridical sentence of the bishop, but also from all gravamina or abuses of episcopal authority, and consequently from extra-judicial acts.[34] II. *During Visitation* (*in sacra visitatione*).—When visiting his province, the metropolitan may exercise jurisdiction, 1, *in foro interno*, by hearing the confessions of, and absolving, either personally or through others, all the subjects of suffragans; he may also absolve from cases reserved to the suffragan; 2, *in foro externo*, by proceeding against notorious criminals, also against those

[26] Cfr. Conc. Pl. Balt. II., n. 81. [27] Our Notes, n. 79.
[28] Phillips, l. c., p. 826; cfr. Conc. Trid., sess. xxiv., cap. iii., d. R.
[29] Sess. xxiv., cap. v., d. R. [30] Soglia, vol. i., pp. 276, 277.
[31] Phillips, Lehrb., p. 243. [32] Ib. [33] Soglia, l. c., p. 277.
[34] Craiss., n. 839; cfr. Conc. Trid., sess. xiii., cap. i., d. R.; sess. xxiv. cap. x., d. R.

who hinder him from exercising his jurisdiction, etc.[35] III. *By Devolution* (*jure devolutionis*).—When the suffragan,[36] whether in the exercise of voluntary or contentious jurisdiction,[37] neglects to comply with the duties of his office, the metropolitan acquires jurisdiction over the diocese of his suffragan, and may remedy (*jus supplendi*) the negligence of such suffragan.[38] It is a controverted question whether this *remedial* jurisdiction devolves upon the metropolitan universally[39]—*i.e.*, in all cases of negligence of suffragans—or only in those particular cases which are specified by the canons of the Church. According to the more probable opinion, which also corresponds to the present discipline of the Church, it is limited to cases expressly laid down by law.[40] Of these cases, determined in canon law, the following are some of the more important, and therefore deserve special mention: 1. If a suffragan bishop refuses to grant a dispensation which, considering the person, place, age, or the good of religion, should be given, the metropolitan has the right to concede it. 2. Metropolitans may appoint to parishes, offices, and the like, of comprovincial dioceses,[41] where appointments are not made within the time prefixed by canon law.[42] 3. Capitular vicars, if not elected by the chapter within eight days from the vacancy of the see, are appointed by the metropolitan.[43] In the United States the temporary administrator is designated either by the bishop, while alive,[44] or, in his default, by the metropolitan or senior suffragan. The permanent administrator is appointed by the Holy See.

532. *Specific character or nature of the jurisdiction of metropolitans*, 1, *over their suffragans*; 2, *over the subjects of*

[35] Phillips, l. c. [36] Soglia, l. c. [37] Reiff., lib. i., tit. x., n. 6, 7.
[38] Ib., tit. xxxi., n. 48. [39] Ib., tit. x., n. 9, 10.
[40] Phillips, Kirchenr., vol. vi., pp. 832, 833. [41] Craiss., n. 842.
[42] Cfr. Devoti, lib. i., tit. iii., n. 40. [43] Soglia, l. c., p. 277.
[44] Our Notes, n. 70–73; cfr. Conc. Pl. Balt. II., n. 96, 97.

suffragans.—I. In general it seems to be admitted that the metropolitical jurisdiction over suffragans, as well as over the subjects of suffragans,[45] is not universal, but is to be limited to cases expressly stated in canon law. II. Nevertheless, the *jurisdictio metropolitana* is not exercisible in the same manner towards suffragans as towards the subjects of suffragans. For, 1, so far as it relates to suffragans,[46] this jurisdiction is direct, immediate, and therefore ordinary. The metropolitan, therefore, is the *ordinarius*[47] and immediate superior of his suffragans.[48] 2. So far, however, as the authority of metropolitans extends towards the subjects of suffragans, it is only mediate[49]—*i.e.*, exercisible only on appeal, etc., as was seen.

533. *The Pallium.*—It is defined the chief ornament of patriarchs and archbishops, and the symbol of the plenitude of the pastoral jurisdiction conferred upon them by the Holy See.[50] Its *form* is that of a stole or band of white wool, having a width of about three fingers; it is worn over the shoulders, forming a circle around the neck, and is embroidered with four or six black or purple crosses.[51] Morally, the pallium signifies the lost sheep carried back to the right path on the shoulders of the loving shepherd. We ask: Where and when can the pallium be worn by archbishops? 1. At solemn or High Mass only;[52] 2, *inside* every church, even though exempt, of the province;[53] it cannot be used *outside* the church or in the open air—*v.g.*, in outdoor processions.[54] 3. Only on the more solemn feasts, such as Christmas, the feast of St. Stephen, St. John, Cir-

[45] Craiss., n. 836. [46] Ib., n. 837. [47] Phillips, Kirchenr., l. c., p. 821.
[48] Reiff., lib. i., tit. xxxi., n. 35. [49] Craiss., n. 839.
[50] Ib., n. 846; cfr. Phillips, Lehrb., § 130; Reiff., lib. i., tit. viii., n. 2, 3.
[51] Salzano, lib. ii., pp. 130, 131. [52] Ib.; cfr. Phillips, Lehrb., p. 245.
[53] Archbishops cannot, aside from a special privilege, wear the pallium *outside* of their provinces. Cfr. Reiff., l. c., n. 13; cfr. Conc. Pl. Balt. II., n. 81.
[54] Reiff., l. c., n. 12–16.

cumcision, Epiphany, Palm Sunday, Easter, etc.; also on the opening day of the provincial council.[55] Titular patriarchs and archbishops (*i.e.*, those *in partibus*) do not receive the pallium,[56] since they never reside in their provinces.[57]

[55] Phillips, l. c.

[56] Ib., note 10.

[57] Bened. XIV., De Syn., lib. xiii., cap. 15, n. 17.

CHAPTER V.

OF BISHOPS.

SECTION I.

Of the Office and Power of Bishops in General.

ART. I.

General Powers of Bishops.

534. A bishop[1] (*episcopus*, *pontifex*, *summus sacerdos*, *antistes*, *pastor*, *angelus*, *praesul*) is defined: one who has received the plenitude of the priesthood as instituted by Christ for the government of the Church.[2] As a portion of the flock of Christ is usually assigned to a bishop, so also a special church, named cathedral, is set apart for him, where he may, as it were, in his own seat or *cathedra*, exercise pontifical functions.[3] The Pope alone can erect a church into a cathedral or designate the limits of a diocese.[4] Cathedral or episcopal sees should be situate in the larger cities only.[5]

535. *Nature of the Episcopal Power in general.*—According to some canonists,[6] the power of bishops is threefold: 1, power of order (*potestas ordinis*); 2, power of teaching (*potestas magisterii*); 3, power of governing (*potestas jurisdictionis*). Other canonists,[7] however, more generally divide it

[1] Phillips, Lehrb., p. 246; cfr. Ferraris, V. Episcopus, art. i., n. 1–14.
[2] Craiss., Elem., n. 397. [3] Craiss., Man., n. 856. [4] Ib., n. 857.
[5] Phillips, l. c., p. 248. [6] Ib., p. 252.
[7] Reiff., lib. i., tit. xxxi., n. 65, 66.

simply into the *potestas ordinis* and the *potestas jurisdictionis;* the *potestas magisterii* being, as they hold, contained in the *potestas jurisdictionis.* We observe, bishops may have the *potestas ordinis* without the *potestas jurisdictionis — v.g.*, bishops consecrated, but without dioceses; and, vice versa, persons not consecrated bishops may have the episcopal *potestas jurisdictionis—v.g.*, bishops elect.[8]

536. What is meant in general, 1, by the *potestas ordinis;* 2, the *potestas jurisdictionis;* 3, the *potestas magisterii* of bishops? 1. The *potestas ordinis*, which bishops receive in their consecration[9] directly from God, consists chiefly in the power of administering the sacraments of confirmation (as ordinary ministers) and holy orders,[10] and of performing pontifical consecrations and blessings. These rights or powers, belonging exclusively to bishops, are named *jura propria.*[11] Powers which priests hold in common with bishops are called *jura communia—v.g.*, the administration of baptism, penance, and the like.[12] 2. The *potestas jurisdictionis*, which makes the bishop the pastor and judge of his diocese,[13] includes the power to govern the whole diocese; the right of visitation; the legislative, judicial, and executive authority; the right to erect and confer parishes, to receive the customary revenues, etc.[14] 3. The *potestas magisterii*, finally, embraces chiefly the office of preaching; of maintaining the purity of faith throughout the diocese; of providing for the religious instruction of the faithful in schools, colleges, and the like. Hence, wherever the civil government, either entirely or even but partially, excludes the influence of the Church from schools, colleges, etc., it becomes the duty of bishops to endeavor, by all means in their power, to establish schools in which secular teaching is not opposed to the principles of faith.[15]

[8] Bouix, De Episc., vol. i., p. 32. [9] Reiff., l. c., n. 68. [10] Ib., n. 65.
[11] Phillips, Kirchenr., vol. vii., p. 51. [12] Walter, p. 273. [13] Reiff., l. c., n. 66.
[14] Phillips, Lehrb., p. 253. [15] Phillips, Kirchenr., vol. vii., pp. 44–47.

537. *Q.* Are bishops superior to priests?

A. Affirmatively. This is *de fide*, being thus defined by the Council of Trent:[16] "If any saith that bishops are not superior to priests, let him be anathema." It is true that in the primitive ages of the Church bishops were not, in name (*quoad nomen*), distinguished from priests.[17] This, however, was not owing to a belief that priests were of the same dignity with bishops; for, as to the power or dignity (*quoad rem*), a distinction was always recognized between the two, even from the very beginning of the Church and in the time of the apostles.[18]

538. *Q.* In what respect are bishops, *jure divino*, superior to priests?

A.—1. In the *potestas ordinis;*[19] for bishops can administer certain sacraments—*v.g.*, orders and confirmation—which priests cannot validly administer.[20] 2. In the *potestas jurisdictionis;* for Christ willed that dioceses, and, therefore,[21] not only laics, but also priests and ecclesiastics in general, should, as a rule, be governed by bishops as ordinary pastors.

Art. II.

Are Bishops the Successors of the Apostles?—From whom do Bishops hold?

539. *Q.* In what sense are bishops the successors of the apostles?

A.—I. It is certain that,[22] in some sense, bishops are the successors of the apostles; but in what sense? Before an-

[16] Sess. xxiii., can. vii.; ib., cap. iv.
[17] Ferraris, V. Episcopus, art. i., n. 28–32.
[18] Dionysius, De Eccl. Hierarch., cap. iv.; ap. Ferraris, l. c., n. 30.
[19] Craiss., n. 861. [20] Bouix, l. c., pp. 34–41. [21] Ib., p. 109.
[22] Conc. Trid., sess. xxiii., cap. iv.

swering we premise: Three powers must be distinguished[23] in the apostles: 1, the *potestas sacerdotii*, or the power to consecrate the body and blood of our Lord and forgive sins;[24] 2, the *potestas ordinis episcopalis*, or the plenitude of the priesthood—*i.e.*, the power to ordain priests, confirm, etc.; 3, the *potestas apostolatus—i.e.*, the power to forgive sins everywhere, appoint bishops all over the world, etc.; in a word, the power to exercise, subordinately to Peter, jurisdiction without any limit as to place, persons, or matters (*jurisdictio universalis*).[25] These three powers were given the apostles by Christ himself. II. Having premised this, we reply: 1. Bishops are, as a body, not as individuals, the successors of the apostles; in other words, the *collegium episcoporum* succeeded the *collegium apostolorum*.[26] Hence, with the exception of the Roman Pontiff and perhaps the Bishop of Jerusalem, no individual bishop can claim to be the successor of the apostles in the sense that the see occupied by him had one of the apostles for its first bishop.[27] It cannot be said, therefore, that this or that bishop is the successor, *v.g.*, of Andrew or John. 2. Bishops are the successors of the apostles, as to the *potestas ordinis*.[28] For bishops have, by virtue of their consecration, the same *character episcopalis*[29] with the apostles, and hence the same power of order. 3. Bishops, moreover, are the successors of the apostles, *quoad potestatem jurisdictionis*, though not *quoad aequalitatem*, but only *quoad similitudinem jurisdictionis*.[30] We say, only *quoad similitudinem jurisdictionis*, for the jurisdiction of the apostles, as we have shown, was *universal;* as such it was extraordinary, personal, and therefore lapsed with the apostles. The jurisdiction of bishops,

[23] Suarez, De Fide, part i., disp. x., sect. 1, 2.
[24] Cfr. Bouix, l. c., pp. 46, 47.
[25] Soglia, vol. i., p. 265.
[26] Phillips, Kirchenr., vol. i., pp. 176, 177.
[27] Bouix, l. c., p. 48.
[28] Ib., p. 53; cfr. Soglia, l. c., p. 266.
[29] Phillips, l. c., pp. 173, 174.
[30] Reiff., l. c., n. 76; cfr. Bouix, l. c., p. 53.

on the other hand, is *particular;* what the apostles could do all the world over bishops can do only in their respective dioceses.[31] Hence, the authority of bishops, as we have said, is *similar*, but not *equal*, to that of the apostles.

540. *Q.* Do bishops receive jurisdiction[32] immediately from God or from the Pope?

A. There are two opinions.[33] The *first* holds that the jurisdiction itself of bishops is communicated to them directly by God, and that in their consecration; but that the exercise of jurisdiction depends upon the authority of the Roman Pontiff. Hence, according to this opinion, the entire *jurisdictio episcopalis* is conferred upon bishops immediately by God;[34] the assigning of territory and subjects for the exercise of jurisdiction belongs to the Pope.[35] The *second* affirms that bishops receive jurisdiction itself, as well as the right to exercise it, immediately or directly from the Pope, and that by their appointment or preconization.[36] *Observations.*—1. This question is not one of mere words, but of very practical bearing. For, if the second opinion be admitted, it follows that the jurisdiction of bishops may be validly (though not licitly) restricted, or even entirely withdrawn, by the Pope without a *causa justa;*[37] while, according to the first, such action of the Pope would be invalid as well as illicit. 2. It does not, however, follow from the second opinion that bishops are but vicars of the Pope; for it involves no repugnance to say Christ willed that bishops should hold directly of the Pope, and at the same

[31] Phillips, l. c., pp. 174, 189.

[32] We say, jurisdiction; for it is certain that bishops receive the *potestas ordinis* directly from God, and that in their consecration. (Salz., lib. ii., p. 134.)

[33] We speak here of jurisdiction as vested in bishops *individually*, prescinding from the question as to how jurisdiction is conferred upon bishops *as a body.* (Craiss., n. 868.)

[34] Cfr. suprə, n. 242.

[35] Bouix, l. c., pp. 55, 56.

[36] Cfr. Salzano, lib. ii., pp. 134–137.

[37] Bouix, l. c., pp. 60, 61.

time that the Pope should ordinarily appoint bishops not merely as vicars *ad nutum revocabiles*,[38] but as pastors who should govern their dioceses *proprio nomine* and be irremovable except for cause. 3. Our Lord, in fact, willed that, as a general rule, dioceses should be committed to bishops to be governed by them as ordinary pastors. We say, *as a general rule*;[39] for, in extraordinary cases—*i.e.*, exceptionally and for just cause—the Pope may entrust the government of this or that diocese to a priest, vicar-apostolic, or chapter;[40] but he cannot simultaneously depose all the bishops of the world, and rule all the dioceses of Christendom by vicars or delegates.[41]

541. *Q.* Have bishops immediate or but mediate jurisdiction over the members of their dioceses?

A. Some writers erroneously assert that parish priests, not bishops, have, *jure divino*, the direct charge or care of the faithful; that bishops, in consequence, are merely to see that parish priests fulfil their parochial duties, and, if need be, to remedy the negligence of pastors.[42] That this is false appears, 1, from the fact that parish priests are of ecclesiastical institution only, did not exist prior to the fourth century, and therefore have not, *jure divino*, the immediate care of souls. Bishops alone, in the first ages of the Church, either personally or through others, exercised the *cura animarum*. 2. Again, it is admitted that a bishop may, even without the consent of the pastor, either personally or through others, perform parochial functions—*v.g.*, preach,[43] baptize, hear confessions, celebrate marriages, etc., in every church and parish of his diocese. 3. Nay, he may order, even against the wish of the parish priest, extraordinary exercises to be held in a parish, such as retreats, missions, and the like.[44]

[38] Bouix, l. c., pp. 76, 77.
[39] Ib.; cfr. Conc. Trid., sess. xxiii., cap. iv.
[40] Ib., l. c., p. 82.
[41] Ib., p. 109; Craiss., n. 880.
[42] Craiss., n. 873.
[43] Ib.
[44] Ib., n. 874.

Now, all this necessarily supposes that he has immediate jurisdiction throughout his diocese. What has been said applies, *à fortiori*, to the United States. As a rule, two bishops cannot be placed over the same diocese. We say, *as a rule;* the exceptions are: 1. Where the faithful are of different rites or have different languages.[45] Where the faithful are merely of different nationalities, the bishop should appoint a special vicar-general or secretary for those of a different nationality. 2. Where a coadjutor is given to a bishop who is sick or otherwise disabled.

542. *Q.* What constitutes the essence of the episcopate?

A.—1. It is of faith that the *sacerdotium* pertains to the essence of the episcopal office.[46] No one but a priest can be a bishop. Hence, no layman, or even deacon, elected as bishop, was ever regarded as a true bishop except after being ordained a priest. 2. Not only the *sacerdotium*, but the *plenitudo sacerdotii*, is essential. For bishops, as we have seen, are, *jure divino*, superior to priests, *potestate ordinis*. The *sacerdotium* of bishops, therefore, is fuller and more perfect than the *sacerdotium* of priests, and is properly termed the fulness or complement of the priesthood (*plenitudo sacerdotii*).[47] 3. The *plenitudo sacerdotii* essential to the episcopate is the *plenitudo sacerdotii* not merely as directed to the exercise of the *potestas ordinis*,[48] but as ordered to the exercise of the *potestas jurisdictionis* or the government of the Church. 4. Hence, the episcopal dignity is correctly defined: The plenitude of the priesthood, as instituted by Christ for the government of the Church.[49] The above remarks will also explain the definition of a bishop given by us.[50]

[45] Craiss., n. 878, 879.
[46] Bouix, l. c., p. 89.
[47] Cfr. Conc. Pl. Balt. II., n. 82.
[48] Bouix, l. c., pp. 89, 90.
[49] Ib., p. 91.
[50] Supra, n. 534.

SECTION II.

Of the Rights and Duties of Bishops in Particular.

543. Some of these rights and duties emanate from the *potestas ordinis*, and are divided into *jura ordinis communia*—*v.g.*, the administration of penance, the care of souls, and into *jura ordinis reservata* or *propria*—*v.g.*, the conferring of orders; others from the *potestas jurisdictionis*—*v.g.*, the legislative, judicial, and executive authority.[51] We pass to the several duties.

ART. I.

Duty of Residence—De Obligatione Residendi.

544. In order that bishops may be able to properly discharge their duties, they are, even though they be cardinals, bound, at least[52] *jure ecclesiastico*, to reside in their dioceses. The residence to which they are obligated is therefore not merely a material and otiose, but a formal and laborious, residence[53]—*i.e.*, they are bound not only to live in their dioceses, but also to discharge their duties therein.[54] The bishop fulfils the precept of residence by residing in *any part of his diocese*;[55] he is not obliged to live in his episcopal city, though he should not remove from it his vicar-general or tribunal.[56]

545. *How long and for what causes Bishops may absent themselves from their dioceses.*—I. Bishops may, for just causes, and when it can be done without detriment to their flocks, be absent from their dioceses three months every

[51] Gerlach, Lehrb., pp. 312–320.

[52] Craiss., n. 882.

[53] Bouix, De Episc., vol. ii., p. 5.

[54] Cfr. Conc. Trid., sess. xxiii., cap. i., d. R.

[55] Thus, the Council of Trent says that bishops are bound to personal residence "in sua ecclesia *vel* dioecesi" (l. c.)

[56] Bouix, l. c., pp. 5, 6.

year, either continuously or interruptedly,[57] and without any permission whatever, whether from the Holy See or the metropolitan.[58] We said above, *for just causes*. Some canonists[59] consider the need of mental relaxation a sufficient cause for an absence of three months; others for but one month. This absence should not occur during Advent or Lent, or on Christmas, Easter, Pentecost, and Corpus Christi.[60] II. At times bishops may, for certain causes,[61] be absent more than three months in the year. Now, what are these causes? 1. Christian charity (*Christiana caritas*)—*v.g.*, to convert heretics, establish peace[62] among Christian rulers. 2. Urgent necessity (*urgens necessitas*)—*v.g.*, if a bishop is persecuted or obliged by reason of ill health to change climate.[63] 3. Obedience due others (*obedientia debita*)—*v.g.*, if a bishop is called away by his lawful superior,[64] *v.g.*, by the Pope. 4. The evident utility (*evidens utilitas*) of the Church or the commonwealth—*v.g.*, the attending general or provincial councils, or even civil diets,[65] such as Parliament, Congress, etc. The Pope's permission in writing is, as a rule, requisite in all these cases.[66] III. They may, however, without the express permission of the Holy See, be absent more than three months in the year for the following causes: 1. In order to pay their prescribed visit to the Apostolic See (*ad visitanda sacra limina*). If their diocese is in Italy, they may be absent four months; if out of Italy, seven months. 2. To be present at oecumenical or provincial councils. 3. To assist at the conclave[67] (in case they are cardinals). We said above, *without the express permission;* for it is evident that the implicit permission is contained in

[57] Conc. Trid., sess. xxiii., cap. i., d. R.
[58] Craiss., n. 887.
[59] Ferraris, V. Episcopus, art. iii., n. 29.
[60] Bouix, l. c., p. 8; cfr. Conc. Trid., l. c.
[61] Conc. Trid., l. c.
[62] Salzano, lib. ii., pp. 147, 148.
[63] Phillips, Lehrb., pp. 155, 156, n. 18–23.
[64] Ferraris, l. c., n. 6.
[65] Ib., n. 7, 8.
[66] Craiss., n. 890.
[67] Ib.

the very cause of the absence. These three cases may also be said to be included in the *debita obedientia.*[68]

546. *Q.* Is a bishop excused from the duty of residence on account of the danger of contracting a contagious disease?

A. He is not, even though he has a coadjutor. Although he cannot leave his diocese during a pestilence or other contagious disease (*tempore pestis*),[69] yet he may remain in those parts of the diocese which are safer and less exposed to the contagion.[70]

547. *Q.* Within what time are newly-appointed bishops bound to proceed to and take up their residence in their diocese?

A. Those who are at the Roman court must do so within a month from the day of their promotion;[71] those who live in Italy, but out of Rome,[72] within two months; others, finally, who dwell out of Italy, within four months.[73]

548. *Q.* What penalties are incurred by bishops who violate the law of residence?

A. Besides committing a mortal sin, they forfeit the fruits of their benefice[74] (with us, their income as bishops—*i.e.*, their salary) in proportion to the time of their absence;[75] hence, they cannot retain such income or salary, but are bound, or in their default their ecclesiastical superior (*i.e.*, the metropolitan[76]) for them, to apply them (*i.e.*, fruits, salary) to the fabric of the churches or to the poor of the place—*i.e.*, of the diocese.[77] This penalty is *latae sententiae.*[78] But if a bishop is unlawfully absent *more than a year*, the metropolitan must denounce him to the Roman Pontiff,

[68] Ferraris, l. c., n. 7, 8, 9; cfr. Salzano, l. c., p. 148.
[69] Ferraris, l. c., art. iii., n. 12, 13. [70] Bouix, De Episc., vol. ii., pp. 16, 17.
[71] Ib., pp. 17, 18. [72] Cfr. Craiss., n. 893. [73] Cfr. Ferraris, l. c., n. 18.
[74] Salzano, l. c., p. 149. [75] Phillips, Lehrb., p. 156. [76] Ib.
[77] Conc. Trid., sess. xxiii., cap. i., d. Ref.; cfr. ib., sess. vi., cap. i., d. Ref.
[78] Salzano, l. c., p. 149.

either by letter or messenger,[79] within the space of three months, so that the Pope may proceed against the said non-resident prelate, and even depose him.[80] If the metropolitan himself be thus absent, he must be denounced by the oldest resident suffragan bishop. The precept of residence is undoubtedly also obligatory on the bishops of the United States.[81]

549. *Q.* Can bishops in the United States absent themselves from their dioceses more than three months in the year with the permission merely of the metropolitan, or, in his absence, of the oldest resident suffragan bishop, but without that of the Pope?

A. They cannot. The Council of Trent,[82] it is true, enacted that the permission of the Pope *or* metropolitan was required; but herein the council was amended by Pope Urban VIII.,[83] who decreed that the Roman Pontiffs *alone* could give the requisite permission.[84] Father Konings,[85] however, maintains the contrary; the distinguished moralist quotes, in favor of his opinion, decree 91 of the Second Plenary Council of Baltimore, which simply contains or gives the Tridentine decree on residence, without the emendation of Urban VIII.

Art. II.

Duty of Visiting the Diocese ("*De Episcopali Dioecesis Visitatione.*")

550. *Definition and Object of Episcopal Visitations.*—A bishop, in order to be able to properly govern his diocese,

[79] Phillips, l. c.
[80] Ferraris, V. Episcopus, art. iii., n. 35, 36.
[81] Conc. Pl. Balt. II., n. 191; cfr. Conc. Pl. Balt. I., n. 5.
[82] Sess. xxiii., cap. i., d. R.
[83] *Const. Sancta Syn.*, 1634; cfr. Craiss., n. 889.
[84] Bouix, l. c., p. 16.
[85] Theol. Mor., n. 1134 (4°).

and report correctly to the Holy See[86] when he pays his visit *ad sacra limina*, should be well informed of the state of his diocese. Now, he can best inform himself on this head by travelling over his diocese, and thus personally inspecting the condition of its various churches (*visitatio episcopalis*). In the East, bishops from the earliest times deputed priests (*visitatores*) to make the visitation; while in the West bishops were already, in the sixth century, obligated to personally traverse or visit their dioceses. These visitations, which had, to some extent,[87] fallen into desuetude, were re-established by the Council of Trent,[88] and made obligatory on bishops and others having the right to make visitations. The object of visitations is chiefly to maintain sound doctrine and preserve good morals, correct abuses, etc.

551. *Q.* Who have the right to make visitations?

A. All ecclesiastical prelates who have *jurisdictio ordinaria* over persons.[89] The vicar-capitular, *sede vacante*, also has this right.[90] The vicar-general, however, has no such right,[91] except when specially commissioned to that effect by the bishop. Bishops are obligated to visit their dioceses personally,[92] unless they are lawfully hindered from doing so—*v.g.*, by sickness. How often is a bishop bound to visit his diocese? A bishop not only can, but is obligated, either personally or through others, whether priests or deacons, to visit once every year, or, if his diocese be very large, once every two years, his entire diocese and its churches.[93]

552. *Q.* Are bishops in the United States bound to visit their dioceses? How often?

A.—1. They are: "Meminerint episcopi se dioeceses suos visitare *districte tenci*, non solum ut confirmationis sacramentum administrent, verum etiam ut gregem sibi creditum

[86] Phillips, Lehrb., p. 255, § 135.
[87] Ib., pp. 256, 257.
[88] Sess. xxiv., cap. iii., d. Ref.
[89] Ferraris, V. Visitare, n. 1, 2.
[90] Ib., n. 9.
[91] Ib., n. 19.
[92] Soglia, vol. ii., p. 16.
[93] Ferraris, l. c., 18.

bene cognoscant."[94] 2. They are obligated to visit their whole diocese at least *once every three years.* Such is the decree of Baltimore.[95] The Tridentine decree, however, limits the time to *two years;* and it is doubtful whether any custom derogating from the Council of Trent can be considered lawful.[96]

553. *Q.* What persons and places are, in general, visitable by the bishop?

A. Visitations are of two kinds, personal and local. The first (*visitatio personalis*) is an examination into the conduct of persons, etc.; the second (*visitatio realis* or *localis*), into the condition of churches, into the administration of church property, etc.[97] Having premised this, we answer: I. The following persons are subject to personal visitations: all the faithful, but especially the entire secular clergy of the diocese;[98] also regulars, in matters pertaining to the care of souls. Hence, regulars who have charge of congregations may be corrected by the bishop, if they neglect any of their parochial duties. II. The following places are, as a rule, subject to local visitations: 1. All church edifices within the diocese.[99] 2. All other ecclesiastical institutions—*v.g.*, hospitals, asylums, protectories.[100] 3. As to exempt places—*v.g.*, monasteries where the monastic discipline is transgressed—the bishop can only urge the regular superior to correct such abuses and cause the rules of the institute to be observed;[101] and if, within six months, the regular superior fails to visit and correct his delinquent subjects, the bishop can, only if the monastery is *sub commenda.*[102] 4. Regulars living permanently out of their monasteries are visitable by the bishop.[103] 5. Convents of non-exempt nuns are in every re-

[94] Conc. Pl. Balt. II., n. 86.
[95] Ib.
[96] Bouix, l. c., p. 25; cfr. Craiss., n. 900, 901.
[97] Soglia, l. c, p. 17.
[98] Ib.; cfr. Salzano, lib. ii., p. 149.
[99] Phillips, l. c., p. 257.
[100] Soglia, l. c., pp. 17, 18.
[101] Phillips, l. c., pp. 257, 258.
[102] Conc. Trid., sess. xxi., cap. viii., d. R.
[103] Craiss., n. 903.

spect subject to the episcopal visitation;[104] this applies to all female religious communities in the United States.

554. *Q.* What are the various things to be inspected or enquired into during the episcopal visitation?

A.—1. Ecclesiastical places (*loca*)—*v.g.*, church edifices; 2, ecclesiastical things (*res*)—*v.g.*, tabernacles, baptismal fonts, missals, vestments, and the like, in churches; 3, the official conduct of clergymen in charge of congregations. The bishop should, therefore, see whether pastors and assistants properly discharge their functions (*munera*) as regards the administration of the sacraments, of church property, and the like; 4, the private conduct or the morals of the clergy and laity (*personae*).[105]

555. *Q.* Is an appeal admissible against the acts and decrees of the bishop on visitation? What is to be done after the visitation is finished?

A.—1. The episcopal visitation should be a *paternal* examination into the state of parishes and other ecclesiastical institutions of the diocese;[106] hence, he should dispense with formal trials and judicial penalties. But, if he institutes regular judicial proceedings, and inflicts a definitive judicial sentence,[107] an appeal lies, even *in suspensivo;* otherwise, only *in devolutivo.*[108] 2. After the visitation, an authentic account of it should be drawn up,[109] to enable the bishop, in his *visitatio sacrorum liminum*, to give the Pope an accurate report of the state of the diocese.[110] 3. The bishop cannot receive anything for the visitation, save food or hospitality[111] (*procuratio, victualia*); and in places where it is the custom

[104] Bouix, l. c., p. 31. [105] Phillips, Lehrb., p. 258; cfr. Salzano, l. c., p. 149.
[106] Phillips, l. c. [107] Bouix, l. c., pp. 35, 36. [108] Soglia, l. c., p. 18.
[109] Craiss., n. 914. [110] Phillips, l. c., p. 255.
[111] Or its equivalent in money, where those who are visited prefer giving money rather than hospitality. (Soglia, l. c., p. 19; cfr. Conc. Trid., sess. xxiv., cap. iii., d. R.)

that nothing whatever be received by him, such custom should be observed.

Art. III.

Of the Obligation Incumbent on Bishops to Visit the Holy See (Visitatio Sacrorum Liminum).

556. The duty resting on bishops to make the *visitatio liminum*[112] consists chiefly, 1, in the visit itself, or journey to the Holy See; 2, in their submitting to the Pope an accurate statement of the condition of their dioceses (*relatio status Ecclesiae*). By the *limina apostolorum* we mean the place where the Pope resides.[113] What persons are obliged to make the visit *ad limina?* It is certain that, at the present day, patriarchs, primates, archbishops, and bishops, even though they be cardinals,[114] are bound, *sub gravi*, to make the *visitatio sacrorum liminum* at stated times.[115] The bishops of the United States are obliged to make this *visitatio* every ten years, as was seen. The manner in which bishops making their visit *ad limina apostolorum* should report on the state of their dioceses is given by Bouix.[116] The period within which the visit is to be made is computed from the time the visit *ad lim.* was last made, so that a new bishop should make the visit the same year when his predecessor would have been obliged to make it.

Art. IV.

Duties of Bishops in regard to the Management of Ecclesiastical Seminaries—Of Seminaries in the United States.

557. The supervision of seminaries is one of the chief duties of bishops.[117] The history of episcopal seminaries is divided chiefly into two periods: one prior, the other sub-

[112] Ferraris, V. Limina Apostolorum, n. 9. [113] Ib., n. 29. [114] Ib., n. 5, 30.

[115] This applies also to inferior prelates having *jurisdictio quasi-episcopalis* (Ferraris, l. c., n. 32). [116] L. c., p. 56 seq.

[117] Phillips, Kirchenr., vol. vii., p. 88.

sequent, to the Council of Trent.[118] I. *Episcopal Seminaries before the Council of Trent.*—Seminaries—*i.e.*, houses set apart for the education of youths wishing to embrace the ecclesiastical state—are traced by some canonists[119] to the very beginning of the Church; by others to the Council of Nice (A.D. 325); and by several to St. Augustine, who, according to Phillips,[120] had set apart a place in his episcopal residence, where youths were brought up for the priesthood. That seminaries existed already in the sixth century is indisputable.[121] Thus, the Second Council of Toledo,[122] in Spain, ordained that boys dedicated by their parents to the service of the Church should be brought up under the tuition of a director, in a house belonging to the cathedral, and under the eye or supervision of the bishop.[123] Nay, it is certain that, in the sixth century, youths destined for the sacred ministry were educated for the priesthood not only in episcopal colleges or seminaries, but in every parish priest's house. This was the custom throughout almost the entire Latin Church.[124] Episcopal seminaries, which had, since the eighth century, come to be superseded by universities,[125] were re-established and placed on a more solid footing by the Council of Trent. II. *Seminaries after the Council of Trent.*—By seminaries we mean, at present, schools or colleges[126] where youths destined for the priesthood are maintained, educated religiously, and trained in ecclesiastical discipline.[127]

[118] Phillips, l. c., p. 90; cfr. our Notes, n. 148–155.

[119] Salzano, lib. iii., p. 186.

[120] L. c., p. 95.

[121] Craiss., n. 924; cfr. Devoti, lib. ii., tit. xi., n. 1, note 3.

[122] Conc. Tolet. II., A.D. 531; cfr. Conc. Tolet. IV., A.D. 633; cfr. Thomassinus, Vetus et Nova Ecclesiae Disciplina, part i., lib. iii., cap. v.; part ii., lib. i., cap. cii. Lucae, 1728.

[123] Phillips, l. c., pp. 95, 96. The words of the Council are: *Debeant* [*i.e.*, the boys] *erudiri in domo Ecclesiae, sub episcopali praesentia, a praeposito.* (Cfr. Craiss., l c.)

[124] Salzano, l. c., p. 186; cfr. Conc. Vasense II., A.D. 529.

[125] Bouix, l. c., p. 68.

[126] Ib.

[127] Conc. Trid., sess. xxiii, cap. xviii., d. Ref.

558. *Q.* What are the principal enactments of the Council of Trent in regard to seminaries?

A.—1. A bishop may have several seminaries; but he is bound to have at least one, unless the poverty of the diocese makes it impossible. 2. A common seminary should be established by the provincial council for those dioceses which, on account of poverty, cannot have their own. 3. Those only should be received into seminaries whose character and inclination afford a hope that they will always serve in the ecclesiastical ministry. Hence, colleges where ecclesiastical students are educated promiscuously with secular students are not seminaries in the Tridentine sense of the term. 4. Not only students of theology, but also of classics, should be admitted. 5. Youths to be received should be at least twelve years old and should at once wear the clerical dress.[128]

559. *Management of Seminaries.*—Three committees are to be appointed: one for the spiritual, two for the temporal administration.[129] 1. The committee on the spiritual direction of the seminary consists of two canons of the cathedral chapter, chosen by the bishop. The bishop is obliged[130] to hear the advice of this committee or commission, in regard to the following matters chiefly: The laying down of the general rules for the seminary; the admission of alumni; the choice or selection of the books to be used; the punishment of delinquents; the appointment and removal of professors, confessors, and the like.[131] 2. The first committee on temporal management of the seminary is composed of four members—namely, of two canons, one of whom is chosen by the bishop, the other by the chapter;[132] and of two clergymen of the city, one of whom is selected by the

[128] Conc. Trid., l. c.; cfr. Bouix, l. c., pp. 69, 70, 71.
[129] Bouix, De Capitulis, p. 424. Paris, 1862.
[130] Craiss., n. 929.
[131] Bouix, l. c., pp. 430, 431.
[132] Ib., p. 433 seq.

bishop, the other by the clergy of the whole diocese. The bishop is bound to hear the advice of this committee, chiefly on these matters:[133] The contributions or assessments to be made for the support of the seminary; the daily or current expenses of the seminary; the administration of the entire property and income of the seminary; in a word, the *whole* temporal management.[134] The second committee on temporal management is also made up of four members, two of whom are selected by the chapter and two by the clergy of the city. It is a sort of auditing committee, and should be present when the administrators of the seminary hand in their annual financial statement to the bishop.[135] *Observation.*—1. The bishop is obliged, even for the validity of his acts, to hear the advice of these committees; but he is not bound to follow it. 2. The members of the first and second committees are irremovable except for cause.[136]

560. *Q.* Can bishops place religious communities in charge of seminaries?

A. They can, under certain conditions. We say, *under certain conditions;*[137] for religious congregations do not, as a rule, undertake the direction of seminaries, save on condition[138] that their superior-general shall have the right to appoint the rector and the professors; that they shall be allowed to manage the seminary without any of the above committees; finally, that the government of the seminary cannot be taken from them except for cause. Now, all these conditions are evidently contrary[139] to the above-mentioned enactments of the Council of Trent. As bishops have no power to derogate from the jus commune—*i.e.*, the Tridentine decrees—it follows that seminaries can be given

[133] Bouix, p. 438; cfr. ib., De Episc., vol. ii., pp. 71, 72.
[134] Craiss., n. 930; cfr. Soglia, vol. ii., pp. 282–284.
[135] Conc. Trid., sess. xxiii., cap. xviii., d. Ref. [136] Craiss., n. 933, 935.
[137] Ib., n. 935. [138] Bouix, De Capitulis, p. 443 seq.
[139] Bouix, De Episc., vol. ii., p. 73.

over to religious congregations only by authority of the Holy See. When, therefore, a bishop wishes to entrust the direction of a seminary to a religious body,[140] he should enter into an agreement with the regular prelate of the order or the superior of the congregation; the articles of agreement should then be sent to the *S. Congr. Concilii* (with us, to the Propaganda); and, when approved by this tribunal, they become permanent law, from which neither the bishop nor his successors can recede.[141]

561. *Manner in which Seminaries are conducted or managed throughout the United States.*—1. With us there are two kinds of seminaries—namely, major and minor.[142] In the former theology, in the latter classics, are taught.[143] But few preparatory or small seminaries exist, the classics being frequently studied in colleges—*i.e.*, institutions which, though under the direct control of bishops and priests, serve chiefly for the education of secular students. 2. Again, some of the major seminaries are attached to colleges; and seminarists, though living in different apartments, are obliged to mingle with the secular students—*v.g.*, in the capacity of teachers, disciplinarians, and the like. 3. There are no committees; the bishop, rector, or procurator conducts the temporal as well as the spiritual administration. This state of things, which, in its chief features, is evidently contrary[144] to the prescription of the Council of Trent on this head, seems to be the outgrowth of circumstances and the result of moral necessity, and therefore more or less justifiable.[145] In no small number of cases, where means permit, seminaries, both major and minor, are now being detached from colleges, and thus placed on a canonical footing, as prescribed by the Council of Trent.

562. *Q.* What is the legislation of the Second Plenary

[140] Cfr. Conc. Pl. Balt. II., n. 408.
[141] Craiss., n. 935.
[142] Conc. Pl. Balt. II., n. 175.
[143] Ib., n. 176, 177.
[144] Cfr. Bouix, l. c., pp. 74–81.
[145] Cfr. Craiss., n. 936.

Council of Baltimore with regard to seminaries in the United States?

A.—1. Bishops are advised to accurately (*in omnibus*) observe,[146] as far as possible, the Tridentine enactments as to seminaries. 2. At least one higher (*seminarium majus*) and one preparatory (*seminarium praeparatorium, parvum*) should be established in each province,[147] though it were desirable that every diocese should have its own major and minor seminary. 3. Seminaries, whether greater or preparatory, should, if possible, be set apart exclusively for the education of ecclesiastical students. Hence, youths studying for the priesthood, even though but twelve years old, should not be brought up in colleges[148] where secular students are educated. 4. In preparatory seminaries the course of studies comprises the vernacular (the English, and, in some instances, also the German language), Latin, Greek, etc.;[149] in the major seminaries, dogmatic and moral theology, the rudiments of canon law, hermeneutics, and sacred eloquence. Students in their last year's theology should also deliver probative sermons in presence of professors and seminarians.[150] 5. Every year, previous to the summer vacations, the seminarists are to be examined in the various branches of their studies[151] by the bishop himself, or, in his absence, by three priests designated by him. 6. Our seminaries are supported chiefly by collections taken up in the various parishes or missions of the respective dioceses.[152]

[146] Conc. Pl. Balt. II., n. 171. [147] Ib., n. 174, 175. [148] Ib., n. 175–182.
[149] Ib., n. 181. [150] Ib., n. 177. [151] Ib.
[152] Ib., n. 171.

Art. V.

Rights and Duties of Bishops as regards the holding of Diocesan Synods (De Officio et Potestate Episcopi quoad Synodum Dioecesanam).

563. *Definition.*—Those meetings[153] are called diocesan synods (*synodus dioecesana*) where the bishop assembles the clergy of his diocese in order to treat of matters that relate to the pastoral charge or the care of souls.[154] The word *council* is at present applicable only to oecumenical, national, and provincial synods, but not to diocesan assemblies.[155] The enactments of diocesan synods are named statutes (*statuta*), decrees (*decreta*), constitutions (*constitutiones*). The term canons (*canones*) is applied to those decrees only which are binding on the entire Church—*v.g.*, those of oecumenical councils.[156]

564. *Q.* How often are diocesan synods to be held in the United States?

A.—1. Once every year,[157] wherever this is feasible. 2. "Quoad si, ob locorum distantiam aliaque peculiaria rerum adjuncta, magno foret incommodo synodum quotannis celebrare, curent episcopi, *ut saltem post habitum ac a Sancta Sede recognitum concilium provinciale sive plenarium, quam levissima interposita mora, synodum convocent dioecesanam*, in quo statuta provincialia seu plenaria omnibus promulgentur, atque executioni dentur."[158] Again, we ask, Is the Tridentine decree enjoining the *annual* celebration of diocesan synods

[153] See our article on Dioc. Syn. in *Brownson's Quarterly Review*, July, 1875, p. 314 seq.

[154] Craiss., n. 80; cfr. our Notes, n. 37.

[155] Bouix, l. c., pp. 348, 349.

[156] Bened. XIV., De Syn., lib. i., cap. iii., n. 3.

[157] Bishops neglecting to hold synods annually incur *suspensio ab officio*, which penalty is *ferendae*, not *latae sententiae* (Bened. XIV., l. c., cap. vi., n. 5; cfr. Conc. Trid., sess. xxiv., c. ii., d. R.)

[158] Conc. Pl. Balt. II., n. 67; cfr. ib., n. 63.

obligatory, *sub gravi*, even at the present day? It is, wherever the holding of synods is practicable, and especially where, as in the United States, no hindrances of a political nature stand in the way. Some canonists, however, hold the negative, asserting that synods have almost everywhere fallen into desuetude.[159] Again, what persons have power to convene diocesan synods? 1. Bishops, as soon as they are confirmed, and even before they are consecrated;[160] they may depute vicars-general or other persons to convoke and preside over synods in their stead.[161] 2. Vicars-capitular, *sede vacante*, and in the United States, by analogy, administrators of dioceses.

565. *Q.* What persons in the United States are obliged to attend diocesan synods?

A.—1. "Praeter sacerdotes[162] curam animarum habentes,[163] sive sint saeculares sive regulares, omnes etiam in dignitatibus quibuscunque constituti, rectores etiam seminariorum, hujusmodi synodis interesse debent." 2. Also all superiors of monasteries situate in the diocese and not governed by a general chapter.[164] Observe, the bishop is the sole law-giver in these assemblies, and therefore he alone has a decisive vote; the other members have but a consultative voice.[165]

566. *Officials of Synods.*—There are two kinds of synodical officials:[166] I. The *officiales synodi—i.e.*, those who perform certain functions *in and during* the synod itself. These

[159] Cfr. Bouix, l. c., pp. 351, 352. [160] Phillips, Kirchenr., vol. vii., p. 204.

[161] Ferraris, V. Synodus Dioec., n. 13. [162] Conc. Pl. Balt. II., n. 66.

[163] By virtue of universal custom only pastors, not their assistants, are bound, as a rule, to attend. We say, *as a rule;* for, if a general reformation of the clergy is to be treated of, *all* ecclesiastics must attend. Cfr. Phillips, Lehrb., p. 354.

[164] Phillips, Lehrb., p. 354; cfr. Bened. XIV., De Syn., lib. iii., cap. xii.

[165] Ferraris, l. c., n. 42, 43.

[166] Gavantus, Praxis Exactissima Syn. Dioec., pars. i., cap. xviii., n. 1, 2; cap. xxx., n. 7; cap. xxxi., n. 1. Venetiis, 1668.

are, at present, chiefly the notary, secretary, promoter, and master of ceremonies; they are, as a rule, appointed in the preliminary meetings (*congregationes praesynodales*), usually held some time prior to the day fixed for the synod. II. The *officiales cleri* are those functionaries who are elected indeed in the synod, but whose duties begin only *at its end* and last *till the next synod.*[167] They are chiefly: 1. Synodical judges (*judices synodales, judices in partibus, judices prosynodales*[168]), to whom all cases of appeal from the decisions of ordinaries are committed by the Holy See; they are Papal delegates, and must not be confounded with the *judices causarum* in the United States.[169] 2. Synodical examiners (*examinatores synodales*), whose duty it is to conduct the examinations for appointments to parishes *in forma concursus.*[170] Where no synod is held the bishop may, with the consent of his chapter, appoint the synodical judges and examiners out of synod,[171] provided he has previously obtained the permission of the Holy See. 3. The fathers of Baltimore counsel that the examiners of the *ordinandi*, of those who are to be approved for confessions,[172] and of applicants for parishes,[173] be appointed in diocesan synods or other meetings of the clergy. Diocesan synods are supplementary to episcopal visitations. It is allowed to appeal against statutes of diocesan synods;[174] such appeal, however, has only an *effectum devolutivum*, not *suspensivum*, and does not, therefore, suspend the obligation of complying with the statutes pending the appeal.[175]

567. *Theological Conferences.*—These serve to remedy, in a measure, the rarer celebration of diocesan synods. Accord-

[167] Gavant., l. c., cap. xxx., n. 7.

[168] Cfr. Conc. Trid., sess. xxv., cap. x., d. R.; cfr. Phillips, Kirchenr., vol. vi., p. 769.

[169] Cfr. Conc. Pl. Balt. II., n. 77.

[170] Cfr. Conc. Trid., sess. xxiv., cap. xviii., d. R.

[171] Salz., lib. i., p. 46.

[172] Conc. Pl. Balt. II., n. 76.

[173] Ib., n. 126.

[174] Bouix, l. c., p. 391.

[175] Bened. XIV., De Syn., lib. xiii., cap. v., n. 12, 13.

ing to the fathers of Baltimore, 1, these conferences (*collationes de rebus theologicis*) should be held four times a year in cities, twice a year in rural districts; 2, all priests, whether secular or regular, having the care of souls, should attend them; 3, the bishop can lay down the method to be observed, suggest the matters or questions to be discussed, and the like.[176]

Art. VI.

Of the Legislative, Judicial, Executive, and Teaching Power of Bishops.

568.—I. *Legislative Power.*—1. The bishop has power not only to publish in his diocese Papal constitutions and the decrees of oecumenical,[177] national, and provincial councils, but also, both *in* and *out* of synod, to enact laws for his clergy and people,[178] provided, however, his regulations be not opposed to the universal laws of the Church.[179] Constitutions enacted by the bishop *in synod* are permanent (*statuta perpetua*), though not immutable—*i.e.*, they do not cease to be of force at the death of the bishop, though they may be changed by the successor.[180] Are statutes made by the bishop *out of synod* also perpetual? The question is controverted.[181] 2. The bishop, not the civil authority, can order public prayers for the necessities of the Church, or because of other just reasons; prohibit abuses that may have introduced themselves in the administration of the sacraments, in the celebration of the Mass, and the like. He may, in general, ordain whatever tends to suppress vice, preserve virtue, and maintain true faith and ecclesiastical discipline. Can the

[176] Conc. Pl. Balt. II., n. 68.
[177] Gerlach, l. c., p. 317.
[178] Our Notes, n. 82, 83.
[179] Bouix, De Episc., vol. ii., p. 80.
[180] Soglia, vol. i., p. 287.
[181] Bened. XIV., De Syn., lib. xiii., cap. v., n. 1, and lib. v., cap. iv., n. 3.

bishop make synodical statutes without the consent or advice of the chapter? We premise: 1. By synodal statutes we mean those which are [182] at least promulgated in synod. 2. We said *chapter*, because it is certain that neither the assent nor the advice of the other priests is requisite.[183] We now answer: 1. As a general rule, statutes may be issued in synod *without the consent* of the chapter (bishop's council in the United States); except, however, (*a*) when this consent is expressly required by law—*v.g.*, in the erection of a new parish; (*b*) where custom favors such consent.[184] 2. Generally speaking, synodal constitutions are not valid if made *without the advice* of the chapter.[185] Though the bishop is bound to take this advice, he need not follow it.[186] 3. The fathers of Baltimore say: "Et si constitutiones sine praevio cleri vel capituli consensu ac suffragio possit statuere episcopus, decet tamen ut prius *omnium synodalium* sententiam exquirat." [187]

569.—II. *Judicial Power.*—Suffice it to say here that all causes belonging in any way whatever to the ecclesiastical forum, even though they be *causae beneficiales*, *matrimoniales*, or *criminales*, are to be taken cognizance of, in the first instance, by the ordinaries of places.[188] III. *Executive or Coactive Power.*—The bishop, in his diocese, may enforce, under penalties and censures—*v.g.*, even under pain of excommunication, to be incurred *ipso facto*—the laws enacted by himself and those of the entire Church.[189] IV. *Teaching Power.*—By virtue of his *potestas magisterii*, the bishop is teacher and doctor in his diocese; out of general councils, however, he cannot define questions of faith or morals; furthermore, he cannot undertake to settle points freely dis-

[182] Craiss., n. 949. [183] Bouix, l. c., p. 390. [184] Craiss., n. 950, 951.
[185] Ib., n. 952. [186] Phillips, Lehrb., pp. 258, 259.
[187] Conc. Pl. Balt. II., n. 66.
[188] Soglia, l. c., p. 288; cfr. Conc. Trid., sess. xxiv., c. xx., d. R.
[189] Bouix, l. c., p. 80.

puted among theologians.[190] He can and should watch over schools, colleges, seminaries, and the like, and see that nothing is there taught contrary to faith, morals, and discipline.[191]

Art. VII.

Of the Powers of Bishops to grant Dispensations.

570. A dispensation is the relaxation of a law in some particular case where it would otherwise bind.[192] Dispensations can be granted by the proper superior only. Bishops can dispense from all laws made by themselves or their predecessors, whether in or out of synod; but not from enactments of popes or oecumenical councils, nor, in general, from the common law of the Church.[193] We say, *in general;* for bishops may dispense even from the *jus commune*[194] in the following cases: 1. *Ex jure id permittente—i.e.*, where the law itself, whether as enacted by the Sovereign Pontiffs[195] or oecumenical councils, either expressly, or at least tacitly[196]—*v.g.*, by saying *posse dispensari*—gives bishops power to grant dispensations. Thus, the Council of Trent[197] *expressly* permits bishops to dispense from the interstices to intervene between the reception of the various orders, whether minor or major; also to grant dispensations from the publication of the banns of matrimony.[198] 2. *By virtue of legitimate custom.* Thus, bishops dispense from the precept of fast, the observance of holidays, and the like. This custom, to be lawful, must be immemorial—*i.e.*, a hundred years old, and not subversive of ecclesiastical discipline. 3. *Ex praesumpta et interpretativa Pontificis delegatione.*[199] Thus, the Pope may

[190] Craiss., n. 954.
[191] Ib., n. 955.
[192] Ib., n. 957.
[193] Ferraris, V. Dispensatio, n. 23.
[194] Soglia, vol. i., p. 290.
[195] Bouix, l. c., p. 92.
[196] Ferraris, l. c., n. 26.
[197] Sess. xxiii., c. xi., d. R.
[198] Ib., sess. xxiv., c. i., d. Ref. Matr.
[199] Ferraris, l. c., n. 27.

reasonably be presumed to authorize bishops to grant dispensations in urgent cases which admit of no delay. Thus, a bishop may, under certain conditions, relax an occult impediment annulling a marriage already publicly contracted. Again, bishops, by virtue of the presumptive consent of the Holy See, may dispense in matters of less importance and of frequent occurrence.[200] 4. *By virtue of special delegation—i.e.*, of special faculties given to bishops by the Holy See[201]—*v.g.*, the *facultates* given to bishops in the United States, for five or ten years, or only for a certain number of cases.[202] 5. *In cases where it is doubtful whether a dispensation is needed.* In cases of this kind bishops may either grant a dispensation for the sake of greater safety (*ad cautelam*), or simply declare that no dispensation is required.[203] We observe: 1. Bishops, in cases n. 1, 2, 3, 5, can dispense from the *jus commune* (*a*) for just reasons only, (*b*) and not universally—*i.e.*, not for an entire diocese, city, or community, but only for individuals.[204] 2. The power of dispensing in cases n. 1, 2, 3, 5, as vested in bishops, is a *potestas ordinaria*, and therefore, *sede vacante*, passes to the chapter; for the same reason it may be delegated to others.[205]

571. Can bishops, without having special faculties from the Holy See, grant dispensations from the law of fast, of abstinence from flesh-meat and white meats (*ova et lacticinia*), and from the precept of abstaining from servile labor on festivals of obligation? 1. They can grant these dispensations to *particular persons*, and that by virtue of universal custom, sanctioned by the Holy See; for it were morally impossible to recur to Rome for a dispensation in every particular case.[206] 2. Bishops cannot, however, dispense from the

[200] Craiss., n. 966.
[201] Phillips, Lehrb., p. 178; cfr. Gerlach, Lehrb., pp. 176, 293, 294.
[202] Cfr. our Notes, pp. 463–476.
[203] Ferraris, l. c., n. 29.
[204] Soglia, l. c., p. 290.
[205] Ferraris, l. c., n. 30.
[206] Bouix, l. c., p. 96.

above laws *in a general manner*[207]—*i.e.*, for a whole diocese, city, or community—except by virtue of special faculties from Rome. 3. The bishops of the United States have faculties from the Holy See *dispensandi super esu carnium, ovorum et lacticiniorum tempore jejuniorum et Quadragesimae;*[208] they may consequently, and in reality do, dispense, in their "Regulations for Lent," *universally*—*i.e.*, for the whole diocese.[209]

572. Are dispensations valid when conceded by a bishop without sufficient cause? A bishop can dispense validly, without just or sufficient cause, 1, from his own laws or those of his inferiors; 2, also from the laws of his superiors, when there is doubt either as to the existence *or* the sufficiency of a cause for dispensation;[210] 3, it is certain that if he knowingly dispenses from the laws of his superiors—*v.g.*, from impediments—without sufficient cause, the dispensation is *always invalid.*[211] It is, however, very probable that if a just cause really exists, the dispensation is valid, even though the bishop or chancellor, when giving it, thought there was no cause.[212] For the validity of dispensations depends not upon the knowledge, but the existence, of sufficient causes. Dispensations granted without sufficient reasons are *always unlawful;* and both the person asking for and the one granting such dispensations commit sin. Hence, the statutes of the various dioceses[213] in the United States usually prescribe that dispensations, especially from the publication of the banns and from the impediments of marriage, be asked in writing, and that canonical rea-

[207] Craiss., n. 973–980.

[208] Fac., form. i., n. 27.

[209] Kenrick, Mor. Tr. IV., pars ii., n. 48.

[210] Craiss., n. 968.

[211] Ib., n. 970.

[212] The following passage of Rohlings seems noteworthy: "Inveniuntur interdum, qui episcopis petitionem oretenus aut in scriptis offerunt, quin ullam prorsus dispensandi causam proponant. *Scire debent, dispensationem ita forte ab episcopo concessam omnino nullam esse*" (Medulla, p. 426).

[213] Cfr. Stat. Dioec. Nov., pp. 10, 51; cfr. Stat. Dioec. Albanensis, 1869, p. 15.

sons be assigned by the petitioner.[214] It would seem that, so far as the validity is concerned, dispensations may be asked for *orally*, since they may validly be granted *orally* by bishops.[215]

Art. VIII.

On the Power of Bishops in regard to various matters relative to the Liturgy of the Church.

573. We shall here only touch on several points. 1. It is an error to attribute to bishops legislative power respecting the liturgy of the Church, independently of the Roman Pontiff.[216] 2. The bishop, if absent from his cathedral, may consecrate the *olea catechumenorum et infirmorum* in some other church.[217] He may also, in case of necessity, bless the holy oils with a less number of ministers than is prescribed by the Pontifical, and, in the United States, also *extra diem coenae Domini*.[218] We ask: Can the Blessed Sacrament be kept in public chapels without special permission from the Holy See? 1. As a rule, the Blessed Sacrament cannot be kept *outside of parochial churches*, except by permission from the Holy See.[219] 2. From this rule are excepted the churches or chapels of regulars, and of nuns having solemn vows and living in enclosure.[220] 3. By special indult from the Holy See, Sisters of Charity and other religious communities of women, though not solemnly professed, may keep the Blessed Sacrament in their chapels;[221] the key of the tabernacle should be kept by the priest.

574. Can bishops *de jure communi* permit the *temporary* celebration of Mass in private houses? We say, *temporary*

[214] Conc. Pl. Balt. II., n. 332, 333, 385, 386.
[215] Rohlings' Medulla, p. 426.
[216] Cfr. Bouix, De Episc., vol. ii., p. 115.
[217] Craiss., n. 982.
[218] Facult., form. i., n. 12; ap. our Notes, p. 464.
[219] Bouix, l. c., pp. 121, 122.
[220] Ib., p. 123.
[221] Kenrick, tr. xvii., n. 140.

celebration; for it is certain that they can no longer allow priests to celebrate *permanently* in private houses. We now answer: According to St. Liguori,[222] it is commonly held that they may still give such temporary permission. Bouix (l. c., p. 127) and Craisson (n. 3568), however, assert that this opinion has no solid basis. In fact, according to two recent decisions (one given in 1847, the other in 1856) of the Holy See, bishops, it would seem, cannot grant such temporary permission, except *si magnae et urgentes adsint causae*, and even then only *per modum actus transeuntis.*[223] What are the special powers of our bishops respecting the place of celebrating Mass? "Celebrandi sub dio et sub terra, in loco tamen decenti . . . si aliter celebrari non possit."[224] This power, which may, in fact is usually, communicated to priests,[225] was restricted by the Second Plenary Council of Baltimore;[226] so that, at present, "nulli sacerdoti liceat Missam celebrare in aedibus privatis, nisi in stationibus, et in iis aedibus quos ordinarius designaverit; aut dum actu missionis exercitiis, procul ab aliqua ecclesia, dat operam." Hence, priests cannot make use of the above faculty of celebrating *in quocunque loco decenti* in cities or places where there are churches.[227] Can our bishops, for grave cause—*v.g.*, when, on account of the cold in winter, it is difficult to say Mass in the church—allow priests to say Mass in their houses, even when the church is near by? Kenrick[228] seems to imply that they may do so.

575. Can a bishop exercise pontifical functions in the diocese of another bishop? 1. He cannot, save by the express permission of the ordinary of the place.[229] 2. Formerly missionary bishops, or those placed under the Propaganda (*v.g.*, the bishops of the United States), were forbidden to exercise pontifical functions in any other but their own diocese, *even*

[222] Lib. vi., n. 358; cfr. Conc. Trid., sess. xxii., Decr. de observ. et evit. in Celebr. Miss. [223] Konings, n. 1328. [224] Fac., form. i., n. 23; ap. our Notes, p. 467.
[225] Konings, n. 1329, quaer. 3. [226] N. 362. [227] Kenrick, l. c., n. 87.
[228] Ib. [229] Conc. Trid., sess. vi., cap. v., d. R.

with the permission of the ordinary of the place.[230] The rigor of this law was modified by Pope Pius VII.,[231] so that, at present, "quando rationabili causa, episcopi seu vicarii apostolici ad alienas dioeceses vel vicariatus se conferunt, possint sibi invicem communicare facultatem pontificalia exercendi."[232]

Art. IX.

Of the Rights and Duties of Bishops in regard to the Sacrament of Confirmation.

576.—I. *Minister of Confirmation.*—The bishop is the *minister ordinarius* of confirmation. It pertains to the essence of this sacrament, 1, that the *forehead* be anointed; 2, in the *form of a cross;* 3, by the *hand* of the bishop, not with any instrument.[233] The bishop is obliged, according to some, even *sub gravi,* to use the thumb of his right hand in anointing the forehead; yet confirmation, given with any finger, whether of the right or left hand, is valid—nay, licit—if the thumb of the right hand cannot be used.[234] A bishop administering confirmation in the diocese of another bishop, even though it be to his own subjects, without the permission of the ordinary of the place, incurs *suspensio a Pontificalibus ipso facto.*[235] He may, however, where it is customary —*v.g.*, in the United States[236]—confirm strangers in his own diocese.[237] By reason of universal custom, it is not at present obligatory, though advisable, that the confirmator and the person to be confirmed be fasting; for it has become customary to give confirmation even in the afternoon.[238] It seems forbidden, at least *sub levi,* to administer confirmation

[230] Decretum Innocentii X., 28 Mart., 1651.
[231] Aug. 8, 1819.
[232] Conc. Pl. Balt. II., n. 404.
[233] Craiss., n. 987.
[234] Kenrick, tr. xvi., n. 2.
[235] St. Liguori, lib. vi., n. 171.
[236] Kenrick, l. c., n. 6.
[237] Bouix, De Episc., vol. ii., pp. 212, 213.
[238] St. Liguori, l. c., n. 174.

outside the church, except for reasonable cause; it is certain, however, that a bishop may give this sacrament in his domestic chapel. In the cathedral, it is usually administered during the time of Pentecost; in the other churches of the diocese, during the episcopal visitation.[239] The bishop is entirely free to give it on non-festal days. We ask: What sin does a bishop commit by neglecting to administer confirmation? It is admitted by all that a bishop, except he is sick or too old,[240] commits a mortal sin by neglecting for a long time—*v.g.*, for eight or ten years—to traverse his diocese, or at least its principal parts, in order to give confirmation. It is no sin, however, for just reasons, to defer giving this sacrament for three years or more.[241] Does a bishop sin mortally by refusing to confirm persons at the point of death who ask for this sacrament? The question is disputed. It is probable that he does not sin even venially.[242]

577.—II. *The Subject of Confirmation.*—1. All baptized persons may validly receive this sacrament. 2. At present, however, it is not allowed in the Latin Church to confirm children before the age of seven,[243] except (*a*) for grave reasons—*v.g.*, in danger of death;[244] (*b*) where it is customary, as in Spain. Insane persons may also be confirmed. The fathers of Baltimore[245] ordain that when confirmation is given to many persons, tickets (*schedulae confirmationis*),[246] on which are written the Christian and family names, should be given by the pastor to each person to be confirmed. This ticket will answer the double purpose of suggesting the Christian name to the bishop, and of recording it, together with the family name, in the register;[247] it will, moreover, serve as a testimonial that the bearer is sufficient-

[239] Phillips, Lehrb., p. 542. [240] Kenrick, l. c., n. 7.
[241] Bouix, l. c., p. 213. [242] Craiss., n. 991. [243] Walter, p. 538.
[244] Cfr. Conc. Pl. Balt. II., n. 252. [245] Ib. [246] Cfr. Craiss., n. 993.
[247] Cfr. Ceremonial for the United States, p. 486. Baltimore, 1865. Cfr. our Notes, n. 227.

ly prepared to receive this sacrament. Formerly a linen band or fillet, with a cross on it, was tied around the forehead of the person confirmed, and worn in this manner one, three, or seven days, according to custom.[248] At present the forehead is immediately wiped with cotton, no band being used. This is the custom also of this country.[249]

578.—III. *Sponsors or Godfathers and Godmothers* (*Patrini et Matrinae Confirmationis*).—1. According to St. Liguori[250] and others, the obligation of having a sponsor in confirmation binds *sub gravi*. When it is impossible, however, to procure sponsors, confirmation may be lawfully given without them. 2. Only one sponsor is allowed for each person. 3. The sponsor should be confirmed, 4, and be different from the one in baptism,[251] 5, and of the same sex with the person to be confirmed. 6. It is sufficient for the sponsor to place the right hand on the shoulder of the person to be confirmed, as is customary in the United States.[252] The fathers of Baltimore ordain: "Confirmati vero habebunt patrinos singuli singulos, nec tamen foeminis mares nec maribus foeminae patrini officium praestabunt. Quod si hoc fieri omnino nequeat, saltem duo pro pueris patrini, et duae pro puellis matrinae adhibeantur." [253]

Art. X.

Rights and Duties of Bishops respecting Causes or Matters of Heresy.

579. The proper judges in regard to the crime of heresy are: 1. The Supreme Pontiff, all over the world. 2. Bishops, in regard to all their subjects. 3. Those Papal delegates who are named inquisitors (*inquisitores fidei*).[254] Lay-

[248] St. Liguori, l. c., n. 188. [249] Kenrick, l. c., n. 12. [250] L. c., n. 185.
[251] Bouix, l. c., p. 215. [252] Kenrick, l. c., n. 10.
[253] Conc. Pl. Balt. II., n. 253. [254] Bouix, l. c., p. 216.

men are not competent judges in matters of heresy, even as to mere questions of fact.[256] In a diocese where there exists an inquisitor—*i.e.*, a judge deputed by the Holy See—the power to examine and punish heretics resides cumulatively in him, and, at the same time, in the bishop.[256] At present, however, the tribunal of the Sacred Inquisition (*Sanctum Officium*) exists, perhaps, nowhere else except in Rome.[257] Hence, bishops, almost everywhere, exclusively possess all the authority which was ordinarily vested in inquisitors of the Holy See.[258]

580. *Q.* Can bishops absolve from heresy?

A.—I. We premise: 1. Formal heresy, of which alone we here speak, is either *internal—i.e.*, not manifested externally by any word or action; or *external—i.e.*, outwardly expressed, in a sufficient manner,[259] by words or actions. 2. External heresy is subdivided into (*a*) *occult*—namely, that which is externally manifested, but known to no one, or only to a few—*v.g.*, five or six persons[260]—and which, moreover, is not yet brought before the judicial or external forum; (*b*) into *public or notorious*—that, namely, which is judicially established[261] (*haeresis notoria notorietate juris, haeresis notoria et ad forum judiciale deducta*) or known to nearly all persons, or at least to the greater portion of a town, neighborhood, parish, college, or monastery[262] (*haeresis notoria notorietate facti, haeresis notoria et ad forum judiciale non deducta*). 3. It is certain[263] that all persons who are formal heretics, and outwardly show their heresy by any grievously sinful act,[264] incur, *ipso facto*, major excommunica-

[256] Reiff., lib. v., tit. vii., n. 431. [258] Bouix, l. c., pp. 217, 218.

[257] Ib., De Judic., vol. ii., pp. 377, 378. Parisiis, 1866.

[258] Reiff., l. c., n. 448, 449. [259] Ib., n. 15. [260] St. Liguori, lib. vii., n. 76.

[261] Either because the guilty person was judicially convicted of heresy or confessed his heresy *in foro externo* (Bouix, De Ep., t. ii., p. 219).

[262] Bouix, De Episc., vol. ii., p. 219. [263] Reiff., l. c., n. 238–247.

[264] Avanzini, Com. in C. Apost. Sedis, p. 68. Romae, 1872.

tion, now reserved, *speciali modo,* to the Pope,[265] in the *Const. Apost. Sedis* of Pope Pius IX. II. We now answer: 1. No excommunication whatever attaches to purely mental heresy, neither is this sort of heresy reserved to the Roman Pontiff; hence, it is absolvable, not only by the bishop, but by any approved confessor.[266] 2. Bishops may, either personally or through others, grant absolution, both *in foro interno* and *in foro externo*, from heresy which is notorious *and* brought before their external forum.[267] We say, *either personally or through others;* for this power is ordinary, and therefore may be delegated to others.[268] Hence, Protestants who wish to abjure their heresy may be absolved by the bishop or his delegate, and it is not necessary to recur to Rome;[269] because, by the very fact that Protestants ask to be received into the Catholic Church, their heresy is brought before the *forum externum* of the bishop. 3. The Pope alone can absolve from heresy which is *notoria et non deducta ad forum judiciale.* 4. It is certain that bishops, at present, cannot absolve from occult heresy. The Council of Trent,[270] it is true, gave bishops power to absolve *pro foro conscientiae* from all occult crimes reserved to the Pope, and also from *occult heresy.*[271] But this power, so far as regards occult heresy, was subsequently revoked[272] by, and exclusively reserved to, the Holy See, both in the *Bulla Coena Domini,*[273] as published several times after the Council of Trent, and in the recent Constitution, *Apostolicae Sedis*, of Pius IX.[274]

[265] Phillips, Lehrb., p. 402. [266] Bouix, l. c., p. 220.
[267] Craiss., n. 1167–1170. [268] Reiff., l. c., n. 369. [269] Bouix, l. c., p. 222.
[270] Sess. xxiv., cap. vi., d. R. [271] Reiff., l. c., n. 350. [272] Bouix, l. c., p. 223 seq.
[273] So named because annually published *in Die Coenae Dni.—i.e.,* on Holy Thursday (Salz., lib. iii., p. 44).
[274] According to the constitution *Apost. Sedis*, persons guilty of occult as well as of notorious heresy incur *excommunicatio latae sententiae speciali modo Pontifici Rom. reservata.* C. Ap. Sedis, n. i.; cfr. Craiss., n. 998; Avanzini, Com. in C. Ap. Sedis, pp. 14 and 68, 69.

581. *Q.* Can the bishops of the United States absolve from occult heresy?

A. They can, by virtue of apostolical indult. For our bishops have faculties from the Holy See, 1, *absolvendi ab haeresi . . . quoscunque.*[275] . . . 2. Again, they have power *absolvendi ab omnibus censuris in Const. Apostolicae Sedis* (d. 12, Oct., 1869) *Romano Pontifici etiam speciali modo, reservatis, excepta absolutione complicis in peccato turpi;*[276] hence, they can, as a rule, absolve from occult heresy. We say, *as a rule;* for, generally speaking, they cannot absolve, 1, those heretics[277] who have come from places where (*v.g.*, in Rome) inquisitorial tribunals are still in existence; 2, nor those who relapse into heresy after having judicially (*i.e.*, before an inquisitor, bishop, or his delegate) abjured it.[278] Our bishops, therefore, can, either personally or through worthy priests of their dioceses, absolve *pro utroque foro* from *every kind of heresy*, whether notorious or occult,[279] except in the two cases just given.

Art. XI.

On the Power of Bishops to Reserve Cases.

582.—I. Although bishops may undoubtedly reserve cases to themselves,[280] it is fitting that they should do so rather *in* than *out* of synod, chiefly because reservations

[275] Facult., form. i., n. 15. [276] Ib., n. 16.

[277] However, if these heretics have become guilty of heresy in missionary countries where *haereses impune grassantur*, they may be absolved by our bishops or their delegates (Facult., l. c., n. 15).

[278] But if these heretics are born in places *ubi impune grassantur haereses*, and, after having judicially abjured, relapse, upon returning to these places they may be absolved by our bishops or by priests authorized by them, but only *in foro conscientiae* (Facult., l. c.)

[279] Cfr. Reiff., l. c., n. 369, 370; et lib. iv., App., facult. i., x., vol. v., pp. 547, 548. [280] Bouix, De Episc., vol. ii., p. 242.

made in synod are, according to all, perpetual,[281] while those made out of synod are considered by many as temporary. Cases reserved to bishops are of two kinds.[282] Some are reserved *by* bishops (named *a nobis—i.e., casus reservati a nobis*), whether in or out of synod; others *to* bishops (*nobis—i.e., casus reservati nobis*), but not *by* them: *v.g.*, all those cases which, though reserved to the Pope, are, nevertheless—*v.g.*, because they are occult—absolvable by bishops; also the three cases reserved to ordinaries in the *C. Ap. Sedis.* II. The *S. Congr. Episc.*[283] has repeatedly admonished bishops to reserve, 1, but few cases; 2, only the more atrocious and more heinous crimes; 3, it has forbidden them to reserve sins or cases already reserved to the Sovereign Pontiff, so as to avoid superfluous reservations.[284] What particular cases or crimes it may be expedient for a bishop to reserve in his diocese cannot be determined by any fixed rule, but must depend upon circumstances. III. Bishops generally reserve certain grievous sins which are more frequently committed in their respective dioceses. Bouix[285] thinks that in France bishops should not, as a rule, reserve more than two, or at most three, cases. *Our bishops* do not, generally speaking, go beyond this number. In the dioceses of New York[286] and Newark[287] but one case is synodically reserved—namely, the contracting of marriage before a Protestant minister. In the diocese of Boston[288] eight, and in that of Albany[289] seven, cases are reserved; most of them, however, are cases already reserved to the Pope. IV. When the Pope gives any one power to absolve from pontifical reservations, he does not thereby confer power to absolve from cases re-

[281] Bened. XIV., De Syn., lib. v., cap. iv., n. 3.
[282] Salz., lib. iii., p. 45.
[283] Jan. 9, 1601, and Nov. 26, 1602.
[284] Bouix, l. c., p. 243.
[285] L. c.
[286] Const. Syn. Dioec. Neo-Eborac., iii., A.D. 1868, p. 9.
[287] Statuta Dioec. Novarc., p. 25.
[288] Const. Syn. Dioec. Boston., ii., A.D. 1868, p. 12.
[289] Statuta Syn. Dioec. Alban., ii., p. 12, A.D. 1869.

served *by* bishops.[290] Hence, not even regulars can absolve from diocesan or episcopal reservations.[291] If a penitent, who has committed a sin reserved by his bishop, confesses in another diocese, where the sin is not reserved, he may there be absolved by any simple confessor, provided he did not go chiefly *in fraudem legis*.[292] When a case is reserved in a provincial council, the power to absolve from it is not taken from the several bishops of the province.[293]

Art. XII.

Of the Power of Bishops relative to Ecclesiastics.

583. Ecclesiastics are either diocesan or extraneous.

§ 1. *Power of Bishops over the Diocesan Clergy.*

584.—I. According to the ancient discipline of the Church,[294] no person was promoted to any *ordo*, whether major or minor, without being, at the same time, attached to some church or pious place, where, even prior to being ordained a priest,[295] he exercised permanently the duties of whatever order he had received. Nor was he allowed to depart from the church for which he was ordained without the permission of the bishop.[296] This discipline had become obsolete many centuries before the Council of Trent.[297] Clerics were promoted even to the priesthood *ad titulum patrimonii* or *pensionis—i.e.*, *absolute*—and without being assigned to any church or receiving any ecclesiastical appointment.[298] Ecclesiastics thus ordained were at liberty either to leave their dioceses entirely or live out of them. Hence, many clerics were continually roving from place to place,

[290] Kenrick, tr. xviii., n. 159, 176.
[291] Phillips, Lehrb., pp. 563, 564.
[292] Bouix, l. c., p. 243.
[293] Ib., p. 244.
[294] Phillips, Kirchenr., vol. i., p. 608.
[295] Ib., pp. 612–617, 620.
[296] Ib., p. 610.
[297] Bouix, l. c., p. 269.
[298] Phillips, l. c., pp. 608, 611.

and were in consequence scarcely amenable to any bishop. II. To remedy this state of things the Council of Trent[299] restored the above ancient discipline, so far as major or sacred orders are concerned, ordaining that no one should be promoted to sacred orders[300] without being attached to some determinate church, and that a person thus attached should not quit his place without permission from the bishop. This Tridentine law, however, seems at present to have almost universally fallen into desuetude.[301] It is not observed in the United States. In fact, it were impracticable, as things are at present, to attach seminarians, when ordained subdeacons or deacons, to any particular church, that they might act as such; for they remain most of the time, before their ordination to the priesthood, in the seminary, and could therefore be of little use to pastors.[302] Moreover, from certain declarations of the *S. Congr. Conc.*, it may be inferred that the Tridentine law on this head no longer obtains strictly.[303] Benedict XIV.,[304] however, holds the contrary.

585. *Q.* Can ecclesiastics leave their dioceses without the permission of the bishop?

A. We premise: A distinction must be drawn between ecclesiastics who are attached to some special church, in the Tridentine sense, or have a benefice requiring personal residence, and those who are not so attached or have no such benefice. We now answer: 1. It is certain that ecclesiastics of the first class cannot abandon their church or give up their benefice—*v.g.*, parish, canonship—and go to another diocese without permission from the bishop.[305] This is evident from the Council of Trent,[306] and also inferable from the promise of obedience given in ordination. We say, *without permission from the bishop;* for, although the fathers

[299] Sess. xxiii., cap. xvi., d. R.
[300] Phillips, l. c., pp. 619, 620.
[301] Bouix, l. c., p. 172.
[302] Craiss., n. 1003, 1004.
[303] Ib., n. 1005.
[304] De Syn., lib. xi., cap. ii., n. 13.
[305] Bouix, l. c., pp. 270–274.
[306] Sess. xxiii., cap. xvi., d. R.

of Trent merely say "without consulting the bishop" (*inconsulto episcopo*), this phrase is commonly explained by canonists as meaning, "without the permission of the bishop" (*invito episcopo*).[307] 2. As to the second class of ecclesiastics, the question is controverted. The *affirmative*—namely, that they can leave, etc.—is the *sententia communior* of canonists. This was also, until of late, the view of the *S. Congr. Concilii.* We say, *until of late;* for the more recent declarations of this congregation seem to favor the *negative*.[308] Hence, as Craisson infers, these ecclesiastics cannot, at present, withdraw entirely from their dioceses except by permission of the bishop. The reason seems to be that these ecclesiastics, though not ordained for any *particular church*, are ordained, at least, for the *service of the diocese*.[309]

586. Can priests in the United States entirely withdraw from their dioceses without the permission of the bishop? They cannot. For the Second Plenary Council of Baltimore declares that all priests in this country who are either *ordained* for a diocese or properly *admitted* into it are obliged to remain in the same diocese until they are canonically dismissed from it.[310] The chief reasons are: 1. The promise of obedience in ordination.[311] 2. The oath taken by those who are ordained *ad titulum missionis* to serve perpetually in the diocese.[312] 3. Because, as we have seen, priests, though not ordained for any particular church or congregation, are ordained for the service of the diocese. Thus the Propaganda[313] writes: *Generatim Ecclesia, cui sacerdotes inservire debent, est dioecesis ad quam pertinent, in specie vero est locus ille cui episcopus eos destinat.*

587. *Letters Dimissory, Testimonial, and Commendatory.*—

[307] Bouix, l. c., p. 270. [308] Ib., pp. 277, 278. [309] Craiss., n. 1008.
[310] Conc. Pl. Balt. II., n. 109. [311] Ib.
[312] Kenrick, tr. viii., n. 24; cfr. Facult. Extraord. C., n. 11; ap. our Notes, p. 471.
[313] Instructio circa Decreta Syn. Prov. Balt. I., A.D. 1829, p. 64, ap. Conc. Balt. Baltimore, 1851.

Ecclesiastics cannot leave their dioceses without testimonial letters.[314] 1. *Letters dimissory* (*litterae dimissoriae, reverendae, licentiales*) are those given by a bishop to his subjects in order that they may be ordained by another bishop; or also those by which ecclesiastics are freed from the jurisdiction of their bishop. In the latter sense, however, letters dimissory are with us called *exeats* (*litterae excorporationis*, formerly *litterae formatae*). Priests cannot be forced to take their *exeat;* in fact, bishops should not give *exeats*, except at the request of clergymen wishing to leave the diocese. Moreover, no priest, even in the United States,[315] should receive his *exeat* unless it be certain that he will be received by another bishop.[316] Now, in the United States, a priest is considered as received into another diocese so soon as the letters testimonial and dimissory of his former bishop are permanently accepted by the bishop to whom he applies for admission.[317] 2. *Letters testimonial* (*litterae testimoniales*) testify to the orders received and to the absence of any canonical impediment prohibiting a priest from saying Mass. 3. *Letters commendatory* (*litterae commendatitiae*) bear witness, moreover, to the morals and learning of ecclesiastics, and are given to them when about to travel.[318]

§ 2. *Rights and Duties of Bishops in regard to extraneous Ecclesiastics.*

588. A bishop not only *can*,[319] but *should*, forbid priests who are strangers and have no letters commendatory from

[314] Craiss., n. 1009. [315] Conc. Pl. Balt. II., n. 122.

[316] The reason is: *Ne sacerdos talis, quasi ovis perdita aut errans inveniatur* (Craiss., l. c.)

[317] The following question was addressed to the Propaganda by the Bishop of Natchez: Q. 4. *Si sacerdos ex una dioecesi ad alteram transire velit, approbante ordinario suo, estne necesse emittat novum juramentum? Et ad tale jusjurandum num requiratur nova Concessio S. Sedis?* The Propaganda thus replied: *Ad 4^m. affirmative ad utrumque.* [318] Craiss., l. c.; cfr. Bouix, De Episc., vol. ii., p. 287.

[319] Bouix, l. c., p. 289.

their ordinaries, from being allowed to say Mass in his diocese.[320] He may, moreover, if he chooses, ordain that strange priests should show their letters either to himself or his vicar-general, and that they be prohibited from saying Mass without a written permission from himself or his vicar-general.[321] We say, *he may*, not *he should;* for he can allow them to say Mass, provided they exhibit their letters commendatory to the rector of the church where they wish to celebrate. The bishop may also command exempt regulars not to permit strangers, whether they be secular priests or regulars of a different order, to say Mass, even in their exempt churches, without permission from him or his vicar-general. We say, *regulars of a different order;* for regulars of the same order can say Mass in the houses of their order everywhere without having permission from the bishop.[322] A priest who is a stranger, even though he has no letters commendatory—*v.g.*, if he has lost them on his journey—can and should be permitted by the bishop to say Mass, provided he can sufficiently prove by witnesses, or in some other way, that he is a worthy priest;[323] nay, he may, even if unable to show his good standing, and if, in consequence, not allowed to say Mass, celebrate privately, provided it can be done without scandal.[324] The obligation incumbent on bishops—not to allow Mass to be said by outside priests who are unprovided with letters commendatory from their ordinaries[325]—is to be understood of extraneous clergymen who are unknown, but not of those who are either well known or at least known to one or several trustworthy persons in the diocese.[326] Thus, in the United States, and almost everywhere, priests coming from neighboring dio-

[320] Conc. Trid., sess. xxiii., cap. xvi., d. R.; and sess. xxii., Decr. de observ. et evit. in Celebr. Missae.

[321] Bouix, l. c., pp. 292, 293.

[322] Ib.; cfr. Craiss., n. 1015.

[323] Bouix, l. c., p. 294.

[324] Ib.

[325] Ib., p. 295; cfr. ib., De Jure Regular., vol. ii., pp. 188, 189.

[326] Cfr. Craiss., n. 1012, 1016.

ceses are allowed, at least for the first eight or ten days, to say Mass without having or showing any letters commendatory. A bishop cannot forbid outside priests to say Mass solely because they are strangers.[327] Nay, extraneous priests, even though unprovided with letters commendatory, cannot, without just cause, be compelled by the bishop to leave the diocese, if they do not wish to celebrate, but merely to reside there.[328]

589. *Q.* What are the rights of bishops in the United States as regards extraneous clergymen?

A. We premise: These clergymen are of two kinds: 1. Some travel or make short trips out of their dioceses for the sake of recreation, the good of their health, or to make collections. 2. Others leave their dioceses in order to seek admission into other dioceses. We now answer: 1. The first class falls under the above rules in regard to saying Mass. Priests, with us, are forbidden, under pain of *suspensio ferendae sententiae*,[329] from making collections in a strange diocese without the permission of the ordinary of the place. 2. As to the second class, bishops are exhorted not to give them permission to say Mass or administer the sacraments, and, *à fortiori*, not to receive them into their dioceses, 1, if they have no letters commendatory from the ordinary to whom they last belonged; 2, if they have neglected to select another ordinary within six months.[330] Extraneous priests coming from Europe should not be admitted into a diocese *nisi litteris suorum episcoporum prius missis, consensum episcopi in cujus dioccesim transire desiderant, obtinuerint*.[331] As to how our bishops may admit into their dioceses regulars who leave their order, see Appendix.[332] Sometimes our bishops also allow secular priests who are strangers to exercise sacred functions, administer the sacra-

[327] Bouix, De Episc., l. c., p. 297. [328] Ib., p. 300.
[329] Conc. Pl. Balt. II., n. 119. [330] Ib., n. 110. [331] Ib., n. 121.
[332] Dub. 3 Episc. Natch.

ments, etc., for a time only, without receiving them permanently into their dioceses.

Art. XIII.

Of the Powers of Bishops concerning Indulgences.

590. *Q.* What are the indulgences which bishops can at present grant by virtue of the *jus commune?*

A.—1. An indulgence of one year,[333] in the consecration, not mere blessing,[334] of a church; 2, of forty days only in other cases. We observe: 1. These indulgences may be granted also by bishops-elect; because the giving of an indulgence is an act of jurisdiction, not of order.[335] 2. They can be granted for the living only, not for the dead. 3. Bishops can grant them only to their subjects; an indulgence, however, attached by the bishop to some pious place —*v.g.*, to the visiting of and praying in some church or chapel[336] (*indulgentia localis*)—may be gained by strangers who comply with the conditions prescribed.[337] 4. Archbishops can grant them, not only in their own dioceses, but in all the dioceses of their provinces, and that even out of the visitation.[338] 5. Bishops may delegate the power of granting them not only to priests, but also to inferior ecclesiastics. 6. Neither coadjutor nor titular (*i.e.*, *in partibus*) bishops nor vicars-general have power to concede indulgences, unless they are specially empowered to do so by the ordinaries of places. Neither can vicars-capitular, *sede vacante*, grant indulgences.[339]

591. *Q.* What indulgences can the bishops of the United States grant by virtue of the *jus speciale* or *particulare*—*i.e.*, by virtue of the faculties given them by the Holy See? In

[333] Ferraris, V. Indulgentia, art. i., n. 5; cfr. Konings, n. 1778.
[334] Our Notes, n. 251.
[335] Bouix, l. c., pp. 301, 302.
[336] Ferraris, l. c., n. 18.
[337] Bouvier, Inst. Theol., vol. iii., p. 526.
[338] Cfr. Phillips, Lehrb., p. 571.
[339] Ib.

other words: What special indulgences are grantable by our bishops?

A. A plenary indulgence, 1, to all the faithful of their dioceses three times a year;[340] 2, to all persons when first converted from heresy;[341] 3, to each of the faithful, *in articulo mortis;* 4, in the Forty Hours' Devotion;[342] 5, our bishops may also impart, four times a year, the Papal benediction, with a plenary indulgence, to be gained by those present.[343] They can also declare an altar privileged in every church of their dioceses;[344] bless rosaries, crucifixes, sacred images,[345] erect certain confraternities, the Way of the Cross, with all the customary Papal indulgences, etc.[346] *Publication of Indulgences granted by the Pope.*—To guard against imposition and prevent abuses in this matter, Papal indulgences can, as a rule, be published in a diocese only with the permission of the bishop.[347] Hence, Pontifical briefs granting new indulgences, even though it be to churches of regulars,[348] are to be submitted to the bishop before being published.[349] However, as Konings, n. 1778, says, indulgences conceded by the Pope to the entire Church in rescripts already published and quoted by approved authors—*v.g.*, by Ferraris—or contained in the *Raccolta*, do not require the episcopal promulgation.

Art. XIV.

Rights and Duties of Bishops in regard to Relics.

592. By the relics of saints (*reliquiae sanctorum*) are understood not only their bodies, in whole or in part, but also their garments, instruments of penance, and the like.[350] Relics which are *newly discovered*, or *produced for the first*

[340] Facult., form. i., n. 14. [341] Ib., n. 17.
[342] Ib., n. 18; cfr. ib., n. 19, 20. [343] Facult. Extraord. C., n. 7.
[344] Ib., n. 8. [345] Ib., n. 9. [346] Ib., n. 10; ap. our Notes, pp. 463, 470 seq.
[347] Phillips, l. c., p. 572; cfr. Conc. Trid., sess. xxi., cap. ix., d. R.
[348] Supra, n. 112; cfr. Craiss., n. 1022. [349] Ferraris, l. c., art. iv., n. 31.
[350] Ferraris, V. Veneratio Sanctorum, n. 52; cfr. Reiff., lib. iii., tit. xlv., n. 24.

time, cannot be exposed for public veneration (*cultus publicus*) until they have been properly authenticated and approved.[351] *Old relics*, however, even though their authentications are lost, should be held in the same veneration as before.[352] I. *Authentication of Relics.*—By whom are relics to be examined and approved before being exposed for public veneration? We premise: We here speak of newly-discovered or newly-produced relics. We now answer: 1. The relics of those who are *already canonized or beatified* may be authenticated and approved in order to public veneration, not only by the Roman Pontiff, but also by bishops; nay, these relics, even though already approved by the Pope, should, nevertheless, be again examined by bishops before being exposed in dioceses, for the purpose of ascertaining whether they were in reality authenticated in Rome.[353] Relics, therefore, cannot be exposed in a diocese for public veneration, even in the churches of regulars,[354] without the permission of the bishop.[355] Should, however, any grave question arise touching these matters, the bishop should not proceed without having first consulted the Pope.[356] 2. The relics of persons deceased in the odor of sanctity, *but not yet beatified*, can be approved, for public veneration, by the Pope only, not by bishops.[357] At present, however, these relics are not thus approved by the Pope; for this approbation would be equivalent to beatification, which now precedes the public veneration of relics. It is allowed, however, to honor privately (*cultus privatus*) all relics, new as well as old, not only of those who are canonized or beatified, but also of those who died in the odor of sanctity, even when such relics have not been approved by any one.[358] II. *Transfer of Relics* (*translationes reliquiarum*).—Can bishops transfer the bodies or really

[351] Conc. Trid., sess. xxv., De Invocat., etc.; cfr. Reiff., l. c., n. 26.
[352] Ferraris, l. c., n. 61.
[353] Reiff., l. c., n. 27.
[354] Ferraris, l. c., n. 55, 56.
[355] Phillips, l. c., pp. 724, 725.
[356] Conc. Trid., l. c., in fine.
[357] Reiff., l. c., n. 28.
[358] Ib., n. 29, 30.

principal relics (*reliquiae insignes*) of saints from one church to another without the permission of the Holy See? There are two opinions. The negative—namely, that they cannot, etc. —held by Benedict XIV.[359] and others, seems at present the more probable opinion. Relics cannot be sold.[360]

Art. XV.

Rights and Duties of Bishops respecting, 1, *Stipends of Masses;* 2, *the Reduction of the Number of Founded Masses;* 3, *other Pious Legacies.*

593.—I. *Stipends of Masses.*—1. It is certain that the bishop has a right to determine what sum of money shall constitute a just honorary for Masses or *intentions;* and even regulars are bound to abide by the rule laid down by him.[361] It is commonly held by canonists that the alms, as fixed by the bishop or custom, is to be considered a just stipend;[362] it need not, however, constitute the support of a priest for a whole day.[363] In the United States the honorary is generally one dollar ($1).[364] 2. It is certain that priests cannot *demand*, though they may *accept* if spontaneously offered, a stipend larger than that fixed by custom or episcopal enactment.[365] 3. According to the more probable opinion, the bishop can ordain that priests shall not accept less than the honorary established by custom or law. In the United States priests should not, as a rule, accept less than the amount fixed by the bishop.[366]

594. What is to be said of churches—*v.g.*, cathedrals or larger parishes—where a great number of stipends is received? 1. It is not allowed,[367] except with the consent of those giving

[359] De Beatif. et Canoniz., lib. iv., part. ii., cap. xxii., n. 11–20.
[360] Reiff., l. c., n. 31. [361] Bouix, l. c., pp. 302, 393. [362] Craiss., n. 1039.
[363] Phillips, l. c., p. 551; cfr. Conc. Pl. Balt. II., n. 369, note 2.
[364] Our Notes, n. 331. [365] Conc. Pl. Balt. II., n. 369. [366] Ib.
[367] Craiss., n. 1042.

the stipends, to accept these honoraries in such quantities as to render it impossible to celebrate all the corresponding Masses in due time.[368] In the United States, as elsewhere, it is customary to send intentions, when too numerously received, to other priests less favored. Care, however, must be taken that the Masses are said in due time. A delay exceeding three months is, generally speaking, a mortal sin; nay, as regards Masses for recently-deceased persons, a delay of one month constitutes, according to many, a mortal sin.[369] 2. Bishops should see that rectors of these churches do not retain for themselves, or even for their churches, any portion, however insignificant, of the stipends; only, in case[370] they are too poor to bear the necessary expense attendant on the celebration of the Masses,[371] it is allowed to keep merely as much as will cover these outlays.

595.—II. *Foundations for Masses.*—Mere stipends (*eleemosynae missarum*, *eleemosynae manuales*, *honoraria*, *stipendia*[372]) differ from foundations for Masses (*fundationes Missarum*, *Missae fundatae*); the latter[373] are endowments made to ensure the *permanent* celebration of Masses;[374] the former are given for the celebration of Masses in this or that case only. We observe: 1. Secular priests, even in the United States,[375] cannot accept foundations of Masses without the written permission of the bishop.[376] 2. Regulars must have the consent of their superiors-general or provincials. We ask: Can bishops at the present day reduce the number of founded[377]

[368] Bouix, De Capitulis, p. 273. [369] Konings, n. 1324, q. 2, 3.

[370] Bouix, l. c., pp. 273, 274.

[371] These expenses—*v.g.*, for altar wine, candles—are defrayed, with us, from the income of the church. [372] Phillips, l. c., p. 549. [373] Ib., p. 552.

[374] *I.e.*, either for a given number of years or perpetually (Conc. Pl. Balt. II., n. 370). [375] Conc. Pl. Balt. II., n. 370.

[376] Bouix, De Episc., vol. ii., p. 304.

[377] We say, *founded Masses;* because no reduction can take place in regard to ordinary intentions or *Missae manuales* (Bened. XIV., De Syn., lib. xiii., cap. ult., n. 29).

Masses? They cannot, except with the permission of the Holy See.[378] The Council of Trent, it is true, gave bishops the power to do so in certain cases. But this power, except where the instrument of foundation itself authorizes the bishop to make a reduction, was reserved *exclusively* to the Holy See by Pope Urban VIII.[379] The reasons for which the Holy See, if applied to, usually grants a reduction of the number of Masses to be said (*reductio Missarum*), are, for instance,[380] 1, the scarcity of priests, making it impossible to say the Masses; 2, depreciation of the funds or capital; 3, total loss of the fund. If, however, the fund is lost without any fault on the part of the ecclesiastical authorities, the obligation to celebrate lapses *ipso facto*.[381] We observe here, bishops not unfrequently receive faculties (*v.g.*, for five or ten years, or longer) from the Holy See to reduce the number of Masses where it is necessary to do so.

596. What do the fathers of Baltimore counsel in regard to foundations of Masses, whether perpetual or temporary, in the United States? 1. No general rule as to the requisite amount of the fund can be laid down for the whole country; each ordinary is free to fix the sum for his diocese.[382] 2. Nevertheless, the fathers seem to recommend that, especially as regards perpetual Masses, the fourth decree of the Second Provincial Council of Cincinnati be followed—to wit: That the fund or endowment for an annual Low Mass be at least $50; for a High Mass (*Missa Cantata*), $100.[383] 3. Great circumspection should be used in accepting foundations, especially of perpetual Masses.[384] It were advisable, therefore, to accept foundations only on the following conditions: 1. That the obligation to celebrate shall cease if the fund,

[378] This holds true also of bishops in the United States. (Cfr. Conc. Pl. Balt. II., p. 319).

[379] Bened. XIV., l. c., n. 19, 20; cfr. Const. *Cum Saepe* of Urban VIII., Jan. 21, 1625. [380] Bouix, l. c., p. 304. [381] Phillips, l. c., p. 554.

[382] Conc. Pl. Balt. II., n. 370. [383] Ib., Append., p. 319. [384] Ib., n. 370.

no matter from what cause, be either entirely lost or yield no income; 2, that the ordinary shall have power to reduce the number of Masses if the interest on the capital, no matter for what reasons, becomes insufficient to make up the stipend fixed by the founder; 3, that if, for whatever cause, the church in which the Masses are to be said is destroyed or deprived of a priest, the Masses can be said in any church to be designated by the ordinary.[385]

597. What is decreed by the Second Plenary Council of Baltimore concerning the record to be kept of Masses, whether ordinary or founded? 1. In all churches, regular as well as secular, there should be a tablet or plate (*catalogus, tabella onerum*), on which should be inscribed all founded Masses, whether temporary or perpetual.[386] 2. In every sacristy there should be two registers: one in which a record is to be kept of all founded Masses; another where the ordinary intentions are to be noted down. The fulfilment of the obligation—*i.e.*, the celebration of the Masses—should also be carefully recorded in these books respectively.[387] Bishops not only *can*, but *should*, enforce those regulations, especially in churches where a large number of Masses are celebrated.[388]

598.—III. *Devises and Legacies for Pious or Charitable Uses* (*testamenta ad causas pias, legata pia*).—By *testamenta ad causas pias* are understood those last wills in which the testator leaves[389] his (*real*) estate, 1, to a church; 2, or to a charitable institution—*v.g.*, to an asylum, hospital, protectory;[390] or, 3, to some religious or charitable society.[391] *Legata pia* or *ad pias causas* are legacies (*i.e.*, *personal* property given by wills) left for religious or charitable uses.[392] We now ask: Can bishops,

[385] Konings, n. 1325, qu. 18. [386] Conc. Pl. Balt. II., n. 371. [387] Ib.
[388] Bouix, De Capitulis, p. 274. Paris, 1862.
[389] Of course, for religious or charitable purposes.
[390] Cfr Soglia, vol. ii., p. 264. [391] Ib., p. 263.
[392] Ib., p. 265; cfr. Konings, n. 915.

even for just reasons, alter these last wills or legacies? In other words, can they use the money or real estate thus devised for other purposes than those specified in the will? The question is controverted. According to St. Liguori,[393] the negative—namely, that they cannot—is the *sententia probabilior*. The Pope alone can, for just cause, change these wills. However, the following is certain: 1. Where, by reason of custom (*v.g.*, in France), bishops alter such wills without the permission of the Holy See, it is safe to abide by the decision of the bishop.[394] 2. Bishops are, according to canon law, executors of all pious dispositions (*legata pia, dispositiones piae*), whether made by last will or between the living; they should consequently see to the exact performance of what is enjoined in these legacies. This holds true even though the testator expressly excludes the bishop from the executorship.[395] 3. The testator may, however, appoint any other suitable executor; in this case the bishop cannot directly interfere; but, if the executor neglects to carry out the provisions of the will, the execution devolves on the bishop; this holds also of bequests *inter vivos*.[396] We observe: Property in the United States cannot be legally devised to a corporation (*v.g.*, to a church, when incorporated), unless such corporation is authorized by its charter to receive bequests by will.[397] We say, *legally;* for devises for religious and charitable uses are valid and binding, in *foro conscientiae*, even though null according to law.

[393] Lib. iv., n. 931, qu. 2.
[394] Craiss., n. 1048.
[395] Ferraris, V. Episcopus, art. vi., n. 171, 172.
[396] Ferraris, l. c., n. 172.
[397] Wells, p. 94; cfr. Kent, vol. iv., n. 507.

Art. XVI.

Rights and Duties of Bishops concerning the Taxes of the Episcopal Chancery.

599. By authority of Pope Innocent XI., a decree,[398] written in Italian, was issued in 1670,[399] fixing the emoluments that can be asked or received for the various acts, instruments, or writings of the episcopal chancery.[400] The object of this decree, usually named *Taxa Innocentiana*, was to introduce, as far as possible, a uniform rate of taxation into all episcopal chanceries throughout the world.[401]

600. *Q.* What are the chief regulations contained in the decree of Innocent XI. ?

A.—I. Neither bishops nor their vicars-general or other officials can ask or receive anything,[402] even though it be voluntarily offered, 1, for the conferring of orders or for other acts pertaining to ordination—*v.g.*, for permission to receive orders from some other bishop; 2, for appointments (*collatio*) to benefices or parishes; 3, for dispensations from impediments of marriage or from the publication of the banns and the like.[403] Though bishops, in granting matrimonial dispensations, cannot accept any honorary, they are, as a rule, allowed to receive a suitable alms, to be applied for charitable uses.[404] We say, *alms;* now, "eleemosynae nomine intelligi non potest *fixa quaedam summa* a quovis eroganda, sed ea, quam quisque, ratione habita suarum facultatum, commode dare potest."[405] Hence, they cannot establish or demand a *fixed tax or sum of money* for dispensa-

[398] Ferraris, V. Taxa. [399] Phillips, Lehrb., p. 290.
[400] Bouix, De Episc., vol. ii., pp. 307, 308. [401] Ferraris, l. c., n. 1, 2.
[402] Except the candle offered by the person ordained, according to the Pontifical. [403] Ferraris, l. c., vol. viii., col. ii., p. 216. [404] Craiss., n. 1057.
[405] Conc. Pl. Balt. II., n. 386, note 1; cfr. our Notes, n. 353.

tions;[406] they may, however, suggest the amount of alms, to vary according to the means of the petitioners. In this sense, it seems to us, the taxes for dispensations, as established in the United States, must be understood. II. However, the chancellor of the bishop may receive a moderate fee for his labor in drawing up the requisite papers in the above cases.[407] Thus, according to the *Taxa Innocentiana*, he may receive for letters dimissory, testimonial, and the like, a Roman *giulio* (10 cents); for letters of appointment to benefices or parishes, a Roman *scudo* ($1 in gold); for writing dispensations, three Roman *giulios* (30 cents). As a rule, the chancellor's fee for each instrument should not exceed, at the highest calculation, a Roman *scudo* ($1). But he cannot receive any fee for letters giving permission to say Mass, administer the sacraments, preach, and the like.[408]

601. Can bishops dispose of the emoluments or receipts of their chanceries, and in what manner? We premise: These receipts are of two kinds: 1, chancery fees proper—*i.e.*, the perquisites for drawing up letters of dispensation, and the like; 2, alms for dispensations. We now answer: 1. The chancellor should have a fixed salary. The emoluments of the first kind—*i.e.*, the chancery fees proper—may go to make up this salary and to defray the other expenses of the chancery office;[409] the balance must be distributed for pious uses, although the *S. C. C.* has sometimes allowed it to be used by bishops for their own wants.[410] Bishops therefore cannot, except by permission from the Holy See, appropriate any part of these receipts to themselves. Where the chancellor has no fixed salary these emoluments, it

[406] This applies also to bishops in the United States: "Quum facultates extraordinariae episcopis [in U. S.] a Sancta Sede collatae, sine ulla mercede exercendae sint, nulla exigenda est taxa pro dispensationibus ab impedimentis matrimonii . . . iis tantum exceptis casibus; in quibus Ap. Sedes eleemosynam oratoribus injungendam monet" (Conc. Pl. Balt. II., n. 386; cfr. ib., p. cxliii.)

[407] Craiss., n. 1054.

[408] Ib., n. 1056.

[409] Bouix, l. c., pp. 313, 314.

[410] Ferraris, V. Cancellaria, n. 12.

would seem, belong entirely to him.[411] 2. The receipts of the second kind—*i.e.*, the alms for dispensations—must be applied *exclusively* for pious uses, and cannot go even towards making up the chancellor's salary.[412]

602. Is the *Taxa Innocentiana—i.e.*, the decree of Innocent XI. concerning the taxes of episcopal chanceries—at present obligatory all over the world, and even in the United States? It is; for, the *S. C. C.*[413] ordered that this decree should be transmitted to *all ordinaries of places;* that it should be kept in a conspicuous place of the episcopal chancery, *and be accurately observed.*[414] Hence, 1, bishops cannot demand or receive anything for dispensations and the like where this is forbidden by the *Taxa Innocentiana;* 2, they can, indeed, fix the taxes of their chanceries;[415] but they should do so according to the rate established by Innocent XI., making due allowance, however, for the difference in the value of money, both as to place and time.[416] For what was formerly purchasable for a Roman scudo costs at present twice as much. This holds true especially of the United States. Hence, in several dioceses of this country,[417] the chancellor's fee for dispensations is, and justly so, $1, where the *Taxa Innocentiana* allows but 30 cents.

603. *Regulations and Customs in the United States respecting the Taxes of Episcopal Chanceries.*—1. As a general rule, a tax—*i.e.*, a determinate sum—is prescribed for dispensations from the publication of the banns;[418] this tax usually ranges between five and ten dollars for a dispensation from *all* the proclamations. Is this tax, though undoubtedly prohibited by the *Taxa Innocentiana*, nevertheless legitimate or capable of becoming legitimate by custom? It is doubtful.[419]

[411] Conc. Trid., sess. xxi., c. i., d. R. [412] Craiss., n. 1057. [413] Oct. 8, 1678.
[414] Bouix, l. c., p. 311. [415] Ferraris, V. Taxa, n. 12. [416] Craiss., n. 1052.
[417] Cfr. Syn. Alban., ii., p. 15, an. 1869; Syn. Boston., ii., p. 35, an. 1868.
[418] Cfr. Stat. Dioec. Novar., p. 94; Stat. Dioec. Boston., p. 34; Stat. Dioec. Alban., p. 15. [419] Cfr. Bouix, l. c., p. 313.

2. For dispensations from impediments, which are relaxed by virtue of the *facultates* D. and E., a suitable alms should be enjoined.[420] 3. For dispensations from the other impediments no alms is or can be required. 4. Besides the alms, a suitable chancery fee may be demanded; with us it is usually $1 for each instrument or paper, no matter of what kind, issued in the chancery. In some dioceses, however, no such fee is given or demanded. This custom is laudable,[421] and is, no doubt, owing to the fact that chancellors are, in many cases, also pastors of congregations, receive the pastor's salary, and are thus enabled to give their services as chancellors gratuitously. *Note.*—The *Taxa Innocentiana* was never, at least in its entirety, received in the United States.

Art. XVII.

Right of Bishops to Constitute Assistant Priests and assign them a sufficient Maintenance—Division of Perquisites in the United States.

604. *Can the bishop compel a parish priest to take one or more assistant priests?* Whenever, owing to the number of parishioners,[422] one rector is not sufficient, the bishop not only *can*, but *should*, oblige the parish priest to associate to himself as many assistants as are required.[423] Moreover, the bishop, not the parish priest, is the judge whether or not, and how many, assistants are necessary. The bishop can

[420] Konings, p. 74.—The statutes of the diocese of Newark say: When a dispensation from the impediments *mixtae religionis, disparitatis cultus,* 1^mi. *aut* 2^di. *gradus affinitatis,* 2^di. *gradus consanguinitatis,* or *in radice* is required, application will be made to the bishop, giving the names of the parties, and stating whether they be poor, or in moderate circumstances, or well to do in the world, and he will fix the amount of alms, to be remitted to him for pious uses (Stat., p. 95).

[421] Conc. Trid., sess. xxi., c. i., d. R.

[422] Ib., c. iv., d. R.

[423] Bouix, l. c., pp. 554, 555.

assign assistant priests a proper salary, to be taken out of the revenues of the parish.[424]

605. *Can the bishop ordain that a portion of the offerings received in the administration of the sacraments* (*baptism and marriage*) *shall go to make up the income or salary of assistant priests?* In other words, can the bishop divide the perquisites between the pastor and his assistants? The question is controverted. 1. Those who hold the *negative* argue thus: It is certain that these honoraries (*emolumenta stolae*) belong, *jure communi*, to the parish priest exclusively.[425] Moreover, according to the far more probable opinion of canonists, these perquisites are not to be accounted *fructus beneficii parochialis* or *reditus Ecclesiae—i.e.*, revenues of the parish. Now, the law of the Church does not seem to give the bishop power to set apart a suitable livelihood (*portio congrua*, *sustentatio congrua*, or simply *congrua*[426]) for assistants, except out of the income or receipts of the parish. It is therefore doubtful whether the bishop can assign assistants a share of the perquisites. 2. The *affirmative* is thus maintained: Bishops, according to the Council of Trent,[427] may assign assistants a part of the revenues of the parish for their salary or sufficient maintenance, *or provide for them in some other manner*.[428] Hence, bishops may assign them part of the perquisites. As this is a probable opinion, it follows that if the bishop should decide that part of the perquisites should be given to the assistants, his decision must be complied with.[429] This whole question was agitated on occasion of a decree of Monseigneur Affre, Archbishop of Paris, enjoining that out of the perquisites of each parish a common fund should be made, to be divided between the pastor and his assistants. From this decision the parish priests of Paris

[424] Bouix, De Episc., l. c., p. 328.
[425] Ib., p. 329.
[426] Phillips, Lehrb., p. 456.
[427] Sess. xxi., c. vi., d. R.
[428] Bouix, l. c., p. 332.
[429] Craiss., n. 1061, 1062.

appealed to Rome in 1848. The decision of the *S. C. C.* was not published.

606. *Division of the Perquisites of Baptisms and Marriages in the United States.*—Bishops in this country are exhorted to establish, with the advice of their priests,[430] an equitable way of apportioning these offerings among the priests residing in the same house, taking into consideration the chief claim as well as the graver duties of the pastor. The statutes of Newark[431] say: "Statuimus ut haec [*i.e.*, perquisites] *aequo modo* dividantur inter pastorem et assistentes, necnon ut iidem expensas domus pariter pro rata ferant."

Art. XVIII.

Rights and Duties of Bishops relative to Preaching, offering up the Sacrifice of the Mass, and administering Church Property.

607.—I. *Preaching.*—Bishops, according to the Council of Trent,[432] are, *jure divino,* bound, *sub gravi,*[433] to preach personally; if lawfully hindered, they should appoint fit persons to discharge wholesomely this office of preaching.[434] This obligation is again thus expressed by the Tridentine fathers:[435] "Bishops shall themselves, in person, each in his own church [*i.e.*, cathedral], announce the Sacred Scriptures and the divine law; and in the other churches [of the diocese] by the parish priests." Universal custom, however, has modified this duty. At present bishops are indeed bound to preach from time to time (*aliquando*), but not regularly, nor as often as parish priests.[436] The bishop alone has the right to give permission to preach, and no person

[430] C. Pl. Balt. II., n. 94.
[431] P. 38.
[432] Sess. v., c. ii.; cfr. ib., sess. xxiii., c. i., d. R.
[433] St. Lig., lib. iii., n. 269.
[434] Cfr. C. Pl. Balt. II., n. 127.
[435] Sess. xxiv., c. iv., d. R.
[436] Bouix, l. c., p. 343; St. Lig., lib. iv., n. 127.

can preach against his will. Regulars cannot preach, even in churches of their own order, in opposition to the will of the bishop. II. *Celebration of the Mass.*—Bishops are obligated to offer up,[437] on Sundays and holidays, the sacrifice of the Mass for the *entire diocese*.[438] They should, unless lawfully hindered, celebrate solemn Mass at Easter, Christmas, Epiphany, Ascension, Pentecost, Feast of SS. Peter and Paul, All Saints, etc.[439] III. *Administration of Church Property.*—The bishop is the administrator, or rather guardian, of the temporalities of the churches or parishes of his diocese.[440] He is obliged to leave to his cathedral all sacred vessels, ornaments, and the like which were purchased with church moneys. Hence, he should make an authentic and accurate inventory[441] of all things used for divine worship and purchased by him, after his appointment to the see, with church moneys or ecclesiastical revenues. Sacred things thus bought belong to the cathedral.[442]

Art. XIX.

Right of Taxation as Vested in Bishops—Contributions to be given Bishops—Collections ordered by Bishops in the United States—"De Juribus Utilibus Episcoporum."

608.—I. *Contributions demandable by Bishops in general.*—The faithful are obligated to contribute for the general wants of the Church, and especially of their own diocese. The bishop, therefore, can ask for contributions from all his dioceseners, and especially from his clergy, for the needs of the diocese.[443] These offerings, whether of the faithful or clergy, should, however, as far as possible, assume the form

[437] St. Lig., H. Ap., tr. vii., n. 65; Conc. Pl. Balt. II., n. 366.
[438] Konings, n. 1135, 1322.
[439] Craiss., n. 1066.
[440] Cfr. Conc. Pl. Balt. II., n. 182–205.
[441] Ib., n. 188.
[442] Craiss., n. 1069, 1070.
[443] Phillips, Lehrb., p. 289.

of voluntary contributions, not of taxes or assessments, in the strict sense of the term.[444]

609.—II. *Contributions in particular.*—Of the contributions made to bishops some are ordinary—those, namely, which are given every year, or at least at stated times; others extraordinary—to wit, those given only in special cases or emergencies. I. The following, chiefly, are the *ordinary or regular contributions:* 1. The *cathedraticum* (also *synodaticum, pensio paschalis*), which means a fixed sum of money to be annually given the ordinary out of the income of the churches in the diocese.[445] It must be given by all churches in charge of secular priests, but not by those of regulars, save when they have the care of souls attached. In most Catholic countries the cathedraticum has gone out of use, bishops there being supported by salaries from the government or from other sources;[446] it still exists in England, in the Greek Church, in the United States, etc.[447] In this country it is, in fact, the main support of bishops, as well as the chief means to defray the expenses incident to the discharge of the various episcopal duties. It is made up from the income of congregations, not out of the salary of pastors or assistants.[448] The amount should be determined by the bishop, with the advice of his clergy.[449] 2. *Procuratio* (also *circada, comestio, albergaria*)—*i.e.*, the hospitality to be extended to the bishop when he canonically visits the diocese. 3. Contributions for the support of the seminary (*seminaristicum, alumnaticum*). 4. Fees of the episcopal chancery (*jus sigilli*).[450] 5. The share falling to bishops from legacies left to a church (*quarta mortuaria, canonica portio, quarta episcopalis*.[451] 6. The fourth part of tithes (*quarta decimationum*).[452] The two last named are abolished at present. They were

[444] Walter, Lehrb., § 190.
[445] Reiff., lib. iii., tit. xxxix., n. 10–18.
[446] Cfr. Craiss., n. 1072.
[447] Walter, l. c.
[448] Conc. Pl. Balt. II., n. 100.
[449] Ib.
[450] Phillips, l. c., p. 290.
[451] Soglia, vol. ii., p. 20.
[452] Phillips, Kirchenr., vol. vii., p. 874.

based on the division of ecclesiastical revenues as made in ancient times, by which the bishop received one-fourth of all ecclesiastical revenues. II. By *extraordinary contributions or collections* (*subsidia charitativa*, *exactiones ecclesiasticae*, *exactiones extraordinariae*) we mean those which the bishop, for manifest and sufficient cause, demands in special cases of necessity.[453] We say, 1, *for manifest cause;* that is, for a cause which is *clearly sufficient.* In case of doubt whether the cause is sufficient or whether the tax is exorbitant, the matter should be settled by recourse to the superior or by arbitrators selected by consent of both parties.[454] We say, 2, *for a sufficient cause;* such as, 1, to defray the expenses of the bishop's consecration; 2, of his visit *ad limina;* 3, or attendance at an oecumenical council; 4, to pay off debts contracted by him or his predecessors for the general good of the diocese; 5, and, in general, the bishop may ask for such collections whenever he has to make heavy expenses for the general good of the diocese or the entire Church.[455] Note, the bishop can insist upon these extraordinary collections only when his other revenues are insufficient to meet the above cases.[456] At the present day, however, these contributions, at least in the form of taxation, have gone out of use in most countries.[457]

610.—III. *Contributions given Bishops in the United States.* —Of these some are, 1, for the support of the bishop—namely, the *cathedraticum;* 2, others for the general wants of the diocese—*v.g.*, collections[458] for the erection of the cathedral, for diocesan institutions, such as asylums, protectories, and the like; 3, others, finally, are given on extraordinary occasions, such as when the bishop is consecrated or visits the Holy See and the like. In these instances the clergy usually assemble and assess themselves for a certain

[453] Reiff., l. c., n. 19. [454] Ib., n. 36. [455] Ib., n. 30. [456] Ib., n. 31.
[457] Craiss., n. 1072; Walter, § 191.
[458] Taken up in the various churches of the diocese by order of the bishop.

amount, to be afterward presented to the diocesan. The laity not unfrequently act in a similar manner.

Art. XX.

Prerogatives of Honor of Bishops — De Juribus Honorificis Episcoporum.

611.—I. *Precedence* among bishops themselves is regulated by the time of their consecration; so that a bishop who is first consecrated precedes all other bishops consecrated after him.[459] Bishops take precedence of apostolic prothonotaries. In his own diocese a bishop takes precedence even of archbishops, save his own metropolitan; however, as a matter of courtesy, the *S. C. C.* recommends that the diocesan should give the preference to all strange bishops and archbishops.[460] When the bishop visits a church in his diocese he should be received solemnly by the clergy; and, if he performs or assists at sacred functions in any part of his diocese, an elevated seat (*thronus*) should be prepared for him at the Gospel side of the sanctuary; the throne should be decorated, though not in red, and surmounted by a canopy or baldachin.[461] II. *The insignia* of bishops, besides their pontifical robes in general, are chiefly: 1, the mitre (*mitra, cidara bicornis, infula*); 2, the crosier (*baculus pastoralis, pedum*), or pastoral staff, which terminates in a curve, and is the symbol of his office of shepherd of souls; 3, the ring, the emblem of his union with his diocese; 4, the golden pectoral cross (*pectorale*), which bishops wear constantly on their breasts.[462] III. *Privileges of Bishops.*— Among others, bishops, 1, can take with them on journeys a portable altar (*altare viaticum, portatile*), in order that they may be able to say Mass everywhere, even outside of

[459] Phillips, l. c., p. 890. [460] Ib., p. 891. [461] Ib., p. 892.
[462] Phillips, Lehrb., pp. 290, 291.

churches. 2. When out of their own dioceses they may everywhere go to confession to, and be absolved by, their own priests, as also by approved confessors of other dioceses, even out of the diocese for which these confessors are approved.[463] 3. Bishops, moreover, do not, unless expressly mentioned, incur censures, whether imposed *ipso jure* or by judicial sentence (*ab homine*). 4. A bishop is addressed by the Pope as *Venerabilis Frater* or *Fraternitas Tua;* by others as *Revendissime et illustrissime Domine.*[464] In his solemn or official acts—*v.g.*, dispensations, ordinances, and the like—he uses the formula:[465] *Ego N. Dei et Apostolicae Sedis gratia* (or *misericordia, miseratione*) *Episcopus* . . . In this formula he omits his family name and makes use of his baptismal name only.[466] 5. He may celebrate Mass and perform sacred functions *in pontificalibus* in all, even the exempt and privileged, churches of his diocese.[467]

[463] Phillips, Kirchenr., l. c., pp. 898, 899.
[464] Ib., p. 900.
[465] Ib., p. 901.
[466] Gerlach, l. c., § 220.
[467] Craiss., n. 1078.

CHAPTER VI.

VARIOUS KINDS OF BISHOPS AND OF PRELATES HAVING QUASI-EPISCOPAL JURISDICTION.

612. There are two kinds of assistants or vicegerents of bishops. Some assist the bishop in the performance of the functions of the *episcopal order—v.g.*, in conferring sacred orders;[1] others in the exercise of *episcopal jurisdiction*. Auxiliary bishops belong to the former, coadjutor bishops to the latter class.[2]

ART. I.

Of Auxiliary Bishops.

613. Auxiliary bishops[3] (*episcopi suffraganei, vicarii in pontificalibus*) are titular bishops appointed by the Holy See to assist ordinary bishops, not in the exercise of their *jurisdictio*,[4] but merely of the *ordo episcopalis—v.g.*, to give confirmation. We say, 1, *titular bishops* (*episcopi titulares, episcopi in partibus infidelium, episcopi annulares*); for they are consecrated with the title of some diocese in the hands of the infidels.[5] We say, 2, *appointed by the Holy See*.[6] Now, they

[1] Walter, l. c., p. 285. [2] Ib., pp. 287, 288. [3] In German, *Weihbischöfe*.

[4] They may, however, be appointed vicars-general, and thus assist the bishop in the exercise of his jurisdiction (Soglia, vol. ii., p. 28; cfr. Bened. XIV., De Syn., lib. xiii., cap. xiv., n. 4).

[5] According to the present discipline of the Church, every bishop is placed over some diocese, governed by him either actually or at least potentially (Bened. XIV., l. c., cap. viii., n. 12).

[6] Usually at the request of those bishops who stand in need of them (Phillips, Lehrb., p. 325).

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are appointed only, 1, when they are really needed; 2, where it is customary to have them; 3, on condition that a proper salary (*congrua*) be assigned them. The reasons for which they are usually appointed are, 1, where a bishop does not reside in his see; 2, or cannot perform the episcopal functions of order on account of old age, infirmity, or the great extent of his diocese. Auxiliary bishops are not bound to make the visit *ad limina*. Their office lapses so soon as the bishop whom they assist dies or in some other way relinquishes his see.[7] They exist, at present, chiefly in Prussia, Austria, Spain, etc. The Pope makes use of titular bishops in the discharge of his apostolic duties.[8]

Art. II.

Of Coadjutor Bishops.

614. By coadjutors (*coadjutores*) we mean those who are appointed by the proper superior to assist bishops in the administration of the diocese.[9] Coadjutors, therefore, must be distinguished from auxiliary bishops. The latter assist bishops in the discharge of the functions of the episcopal *ordo*;[10] the former in the exercise of the episcopal *jurisdictio*.[11] *How many kinds of coadjutors are there at present?* 1. By reason of their duties (*ratione materiae*) coadjutors are divided into temporal (*coadjutores in temporalibus tantum*) and spiritual (*coadjutores in spiritualibus, coadjutores in spiritualibus simul et temporalibus*).[12] The latter are appointed to assist the bishop in the performance of his spiritual duties, whether of order or jurisdiction, and not unfrequently also in the man-

[7] Soglia, l. c., p. 29. [8] Craiss., n. 1083.
[9] Bouix, De Episc., vol. i., p. 498; Thomassin., p. ii., l. ii., c. lv. seq.
[10] Walter, p. 286. [11] Phillips, l. c., § 163.
[12] Leurenius Forum Benef., Tr. de Coadjutoriis, qu. 308. Coloniae Aggripp., 1739.

agement of Church property. In order to be able to exercise *pontificalia*, they are consecrated bishops *in part.;* the former only in the administration of the temporalities of the diocese, and consequently they need not be consecrated bishops.[13] 2. Again, by reason of their tenure of office (*ratione temporis et formae*), they are divided into such as hold office temporarily (*coadjutores temporarii, temporales*)—*i.e.*, until the bishop's death or recovery—and such as hold office permanently (*coadjutores cum futura successione, cum jure successionis, perpetui*)—that is, those who are appointed with the right of succession at the death of the bishop.[14] We ask: Are coadjutorships *cum jure* prohibited at present? They are, generally speaking.[15] The reasons are: 1. They carry with them the appearance of hereditary succession[16]—a thing forbidden by the sacred canons. 2. Because they contain an expectancy.[17] We said above, *generally speaking;* for, in certain cases—namely, where the urgent necessity or evident utility of the diocese so demands—perpetual coadjutors may be appointed by the Holy See.

615. *Appointment of Coadjutors.*—I. *To whom belongs the right of appointment?* To the Holy See solely.[18] In certain cases, however—*v.g.*, if the diocese is at a great distance from the Holy See—a bishop who, by reason of age or infirmity, is unable to discharge his duties, may himself, by virtue of Papal authority, select a *temporary*[19] coadjutor, with the advice and consent, however, of his chapter. Nay, in case the bishop is insane, the chapter itself, provided two-

[13] Bouix, l. c., p. 498. [14] Leuren., l. c., n. 2. [15] Salz., vol. ii., p. 170.

[16] Conc. Trid., sess. xxv., c. vii., d. R.

[17] Namely, in this: that they confer upon coadjutors the right to succeed, *ipso jure*, at the death of the bishop. As such an expectancy may occasion in others a desire for the death of the bishop, it is detrimental to ecclesiastical discipline. Cfr. Phillips, Lehrb., § 163; Leuren., l. c., qu. 309.

[18] Craiss., n. 1099, 1100.

[19] *Perpetual* coadjutors must *in all cases* be appointed by the Holy See. Cfr. Bouix, l. c., p. 500.

thirds of the canons consent, may appoint such coadjutor; a report of the whole case should be sent to Rome as soon as possible. II. *For what causes may coadjutors be appointed?* For these chiefly: 1. Chronic or incurable bodily disease of such nature as to make it impossible for the bishop to perform his duties—*v.g.*, loss of speech, blindness, paralysis, and the like; 2, old age—*v.g.*, age of 60 or 70; 3, insanity;[20] 4, great negligence on the part of the bishop in the discharge of his duties.[21] Both perpetual and temporary coadjutors are appointable for the reasons just given. Where a temporary coadjutor is all that is needed a perpetual one should not be appointed. Observe, that although the Holy See does not usually assign a perpetual coadjutor to a bishop against his will, yet it may do so—in fact, has done so—where there was just cause. *A fortiori*, temporary coadjutors may be—in fact, are sometimes—given bishops against their will.[22] III. *Mode of appointment of Coadjutors in the United States.*—"Episcopus qui coadjutorem petit, nomina trium sacerdotum archiepiscopo et episcopis suffraganeis significabit, supplicem libellum de ea re ad S. C. (Prop. Fidei) mittet, et archiepiscopus et episcopi mentem suam de coadjutore eligendo communicabunt."[23]

616. *Rights of Coadjutors.*—I. The nature of these rights depends chiefly upon the tenor of the apostolic letters-patent by which coadjutors are appointed.[24] If, however, the apostolic letters are not sufficiently explicit,[25] the powers in question must be determined by the reason which caused the appointment.[26] Thus, 1, a coadjutor, whether temporary or permanent, assigned to an *insane* bishop, obtains *complete* administration of the diocese in temporal as well as in spiritual matters;[27] in fact, such coadjutor has the same

[20] Leuren., l. c., qu. 339, 340, 341, 342.
[21] Bouix, l. c., p. 506.
[22] Ib., p. 507.
[23] Conc. Pl. Balt. II., n. 103.
[24] Leuren., l. c., qu. 397.
[25] Ib. (5°).
[26] Soglia, vol. ii., p. 30.
[27] Craiss., n. 1103.

power as though he were the actual bishop of the diocese; he cannot, however, alienate ecclesiastical goods.[28] 2. On the other hand, a coadjutor given to a bishop who is merely *infirm* or *old* can only perform those duties which the bishop is unable or unwilling to discharge, but not those which the bishop has reserved to himself. Hence, it may be said that, as a rule, the coadjutor in this case should undertake nothing without the advice and consent of the bishop.[29] But, if the bishop objects unreasonably to the exercise of powers by the coadjutor, the latter can proceed against the will of the former; the more prudent course, however, is to refer the matter to the Holy See.[30] II. *Salary of Coadjutors.*—Coadjutors are entitled to a competent salary (*congrua, sustentatio congrua*). All agree that if the ecclesiastical income of the bishop is large enough to support himself as well as his coadjutor, the latter should receive his salary from such income.[31] The difficulty is: What is to be done in case the above income is insufficient for both? Should it go to the bishop or to the coadjutor in such case? The question is disputed.[32] Practically speaking, however, this difficulty is of no consequence. For the Holy See, before appointing a coadjutor, usually determines the amount of salary, as well as the source whence it is to be derived. If possible, the coadjutor should have suitable lodgings in the episcopal residence.[33] III. *How do the powers of coadjutors lapse?* 1. Those of temporary coadjutors lapse with the death, deposition, or resignation of the bishop.[34] 2. Coadjutors *cum futura successione* succeed *ipso jure*, and without any new election, so soon[35] as the bishopric falls vacant.[36] Bishops in the United States, who hold the Church property of the dio-

[28] Bouix, l. c., p. 509. [29] Salz., l. c., p. 170. [30] Bouix, l. c., pp. 510–512.
[31] Ib., p. 516. [32] Cfr. Ferraris, V. Coadjutor, n. 31–42.
[33] Bouix, l. c. [34] Craiss., n. 1112.
[35] Then, also, they lay aside the title of their see *in partibus*, and assume that of their actual diocese. [36] Soglia, vol. i., p. 220.

cese in their own name, should, in their testament, name their coadjutor—if they have one—their heir.[37] With coadjutors may be classed vicars-apostolic who are appointed by the Holy See to govern a diocese whose bishop is suspended from the exercise of jurisdiction for having abused his power.[38]

Art. III.

Of Regular Bishops.

617.—I. Regulars may be—in fact, are sometimes—raised to the episcopal dignity; the permission, however, of their superior is requisite.[39] A regular bishop is, from the day of his promotion in Papal Consistory, released merely from the obligation of observing those rules of his order which are incompatible with the episcopal office and dignity; but not from any of the essential vows.[40] Still, he is exempt as to some of the effects of the vows of obedience and poverty. Thus, he is no longer bound to obey the prelate of his order, but only the Sovereign Pontiff. Again, he remains, it is true, incapable of acquiring property for himself, but he may freely use temporal goods to support himself in a manner befitting his exalted station.[41] II. A regular bishop, moreover, is obligated to wear the habit of his order as to its *color;* the *shape* of his cassock, however, is the same as that of secular bishops.[42] He must, as a rule, recite the office or breviary of his diocese, not of his order.[43] If he should resign his episcopal see, or be removed from it, he is bound to return to his monastery, unless he obtains permission from the Pope to remain out of it.[44]

[37] Conc. Pl. Balt. II., n. 189.
[38] Salz., l. c., p. 171.
[39] Bouix, l. c., p. 496.
[40] Ferraris, V. Episcopus, art. vii., n. 1, 2.
[41] Ib., n. 2.
[42] Ib., n. 4, 5.
[43] Ib., n. 7.
[44] Ib., n. 20.

Art. IV.

Of Inferior Prelates.

618. Of prelates inferior to bishops (*praelati inferiores*)—*i.e.*, those who, though not clothed with the episcopal character or *ordo*, are nevertheless vested by the Holy See with greater or less episcopal rights[45]—there are three classes: the lowest, the middle, and the highest. I. *The lowest class* consists of those who preside only over such persons, both lay and ecclesiastical, as are attached or belong to a certain church or monastery.[46] General superiors of religious orders, provincials, and abbots immediately subject to the Holy See, are prelates of this kind.[47] Regular prelates of this class cannot hear or confer upon others faculties to hear the confessions of seculars.[48] We say, *seculars;* for regular confessors hold immediately of their superiors,[49] not of bishops, faculties to absolve not only professed (male) members of their own order, but also novices and secular domestics living in the monastery. II. *The middle or second class* is made up of those who exercise jurisdiction over the inhabitants—*i.e.*, over the clergy as well as laity—of a certain district or territory *which is situate in and entirely surrounded by the diocese of another bishop.* Hence they are named *praelati in dioecesi.* III. *The highest or third kind* is composed of those who exercise jurisdiction in a district (*i.e.*, in one or several cities or places) *which is altogether separate from and outside of any diocese whatever.* They are consequently termed *praelati nullius—i.e., dioeceseos.* They have all the rights of ordinary bishops, save those which require the exercise of the *ordo episcopalis.*[50]

[45] Bouix, l. c., p. 532.
[46] Phillips, Lehrb., §. 149.
[47] Soglia, vol. ii., § 18.
[48] Bouix, l. c., p. 543; De Jur. Reg., t. ii., p. 220.
[49] Konings, n. 1395.
[50] Our Notes, p. 348.

CHAPTER VII

OF THE BISHOP'S ASSISTANTS OR VICEGERENTS IN THE EXERCISE OF EPISCOPAL JURISDICTION.

619. Under this head we shall briefly treat, 1, of vicars-general; 2, of archdeacons and arch-priests; 3, of vicars-forane or rural deans.

ART. I.

Of Vicars-General.

§ 1. *What is meant by a Vicar-General?*

620. By a vicar-general (*vicarius generalis, vicarius in spiritualibus, officialis*) we mean one who is legitimately appointed to exercise, in a general way, episcopal jurisdiction in the bishop's stead, and in such manner that his acts are considered the acts of the bishop himself.[1] We say, 1, who is *legitimately* appointed. Now, vicars-general may be appointed not only by bishops, but also by the Pope.[2] We say, 2, to exercise *jurisdiction;* for vicars-general do not necessarily act as vicegerents of bishops in regard to the functions of the *ordo episcopalis.*[3] We say, 3, in a *general way;* for the jurisdiction of vicars-general should be *general,* at least morally speaking.[4] For it were a contradiction in

[1] Bouix, De Judic., vol. i., p. 358.

[2] Leuren., For. Benef. Tr. de Vicar Gen., cap. i., qu. 26. [3] Craiss., n. 1120.

[4] We say, *morally speaking.* Hence, the jurisdiction of V. G. may be—in fact, is—in various matters restricted, both by the *jus commune* (*a jure*) and by bishops (*ab homine*). It cannot, however, be restricted to such an extent as to make it cease to be morally universal (Bouix, l. c., pp. 352–358).

terms to say that a person is the *general* vicegerent of another, unless he can, at least in some sense, *universally* take the place of the person for whom he acts. Hence, a vicar appointed by the bishop for a certain district only, but not for the whole diocese, would not be, even though he received general powers for such district, canonically speaking, a *vicarius generalis*, but merely a *delegatus*, and consequently appeals from him would have to be made to the bishop, not to the metropolitan. Now, the jurisdiction of vicars-general is morally universal (*a*) as to *territory—i.e.*, it extends to *all persons* in the diocese; (*b*) as to *matters*. We say, 4, *in the bishop's stead;* hence, the *jurisdictio* of vicars-general, though *ordinaria*, not *delegata*,[5] is rightly named *jurisdictio vicarialis* or *ministerialis*.[6] We say, 5, *in such manner that his acts*, etc.; that is, these acts have the same effect in law as if done by the bishop himself. The vicar-general should reside in the episcopal city.[7]

621. Is the vicar-general necessarily vested with jurisdiction *in temporalibus* as well as *in spiritualibus?* We premise: By a *vicarius generalis in temporalibus* we mean one whom the bishop selects to manage the Church property of the diocese, as also his own income as bishop; by a *vicarius generalis in spiritualibus*, one who is deputed to exercise ecclesiastical jurisdiction relative to other matters.[8] We now answer: The question is controverted. The *affirmative*, as held by Ferraris[9] and others, maintains that a vicar-general, clothed with jurisdiction *in spiritualibus* only, but not *in temporalibus*, is not, rigorously speaking, the *general* vicegerent of the bishop, and, therefore, no vicar-general. The *negative*,

[5] Cfr. tamen De Camillis, Inst. Jur. Can., vol. i., p. 224. Paris, 1868.

[6] Phillips, Lehrb., p. 333.

[7] If there are two vicars-general, both should reside in the episcopal city (*in eodem loco, in quo episcopus sedem habet*). Ferraris, V. Vicarius Gen., art. i., n. 1, 8, 9; cfr. Reiff., lib. i., tit. xxviii., n. 16, 17.

[8] Bouix, l. c., p. 353.

[9] V. Vicarius Gen., art. ii., n. 1.

however, which holds that vicars-general need only be vested with power *in spiritualibus*, seems more conformable to the Council of Trent.[10] It is universally admitted that a *vicarius gen. in temp. tantum* cannot be properly called vicar-general, but rather procurator (*procurator, oeconomus*).[11] The fathers of Baltimore recommend that such procurators, distinct from vicars-general proper, be appointed: "Valde in episcopi solatium verteret, si etiam oeconomum seu in temporalibus rebus gerendis procuratorem, laicum sive clericum (episcopus) nominaret, cujus foret muneris, domus episcopalis curam in temporalibus habere, necnon et ecclesiarum bonorumque ecclesiasticorum ad nutum episcopi temporalem gerere administrationem." [12]

622. Does the vicar-general receive jurisdiction from the law or from the bishop? The more common opinion is that, although the vicar-general is ordinarily appointed by the bishop, he nevertheless holds from the common law (*a lege, a jure, ratione officii sui*), and not from the bishop (*non ab episcopo*).[13] For a person is said to have jurisdiction from the law when, by virtue of the *jus commune*, his powers are determined *certo et fixo modo, quem episcopus mutare nequit.*[14] Now, the jurisdiction of vicars-general is so determined; for, as was seen, his jurisdiction, whether the bishop wills it or not, extends, by virtue of the common law, morally to all matters and over the entire diocese, and is in this respect not dependent on or alterable by the bishop.[15] Nor can it be objected that the vicar-general receives jurisdiction through the episcopal appointment. For this appointment is but the means by which the law confers jurisdiction upon him.[16]

623. Is the *jurisdictio* of the vicar-general *ordinaria* or only *delegata?* It is *jurisdictio ordinaria*. This is certain at

[10] Craiss., n. 1124.
[11] Leuren., l. c., qu. 8, n. 2.
[12] C. Pl. Balt. II., n. 75; ib., footnote 4.
[13] Leuren., l. c., qu. 72.
[14] Bouix, l. c., p. 360.
[15] Ib., p. 361.
[16] Our Notes, pp. 70, 71

present.[17] In fact, his jurisdiction is one and the same with that of the bishop himself; for the tribunal (*consistorium*, *auditorium*) of the vicar-general is considered in ecclesiastical law the tribunal of the bishop; the person of the vicar-general, the person of the bishop; and the sentence pronounced by the vicar-general, the sentence of the bishop. This holds so strictly that no appeal lies from the vicar-general to the bishop, because it would be appealing from the same person to the same person.[18] Now, the jurisdiction of the bishop is ordinary; hence, that of the vicar-general is likewise ordinary.[19] But it may be objected: Ordinary jurisdiction is essentially perpetual; now, that of the vicar-general is revocable *ad nutum episcopi;* hence, etc. We deny the major. Ordinary jurisdiction is that which is annexed to some office, but not that which is annexed to it irrevocably. Thus, Papal legates have ordinary, though not irrevocable, jurisdiction.[20]

624. How is the principle to be understood: *A sententia vicarii generalis non datur ad episcopum appellatio?* This principle, being unanimously admitted by canonists, is incontrovertible.[21] Hence, 1, no custom to the contrary can obtain; it holds, 2, even though the parties interested should consent to an appeal to the bishop; 3, of extra-judicial as well as judicial appeals; 4, even of cases or matters for which the vicar-general needs a special commission, provided such matters are committed to him simultaneously with his appointment as vicar-general. We say, *simultaneously*, etc.; for the principle in question does not—at least, according to some—extend to matters specially delegated to him *after* his appointment to the vicar-generalship (*extra commissionem generalem vicariatus*); because in this case the V. G. pro-

[17] Formerly the question was controverted. Bouix, l. c.

[18] Bouix, l. c., pp. 363, 364.

[19] The V. G. is therefore properly named *ordinarius*. Ferraris, l. c., art. i., n. 41–43. [20] Craiss., n. 1127. [21] Bouix, l. c., pp. 372–376.

ceeds as *delegatus*, not as *ordinarius*, and hence an appeal lies from him to the bishop.[22] Observe, that even in cases where no appeal lies from the vicar-general to the bishop, a petition can always be addressed to him for the remission of the penalty imposed by his vicar-general.[23] The terms *vicarius generalis* and *officialis* are, "de jure communi," synonymous. In fact, in Italy both these terms are applied to one and the same person vested with voluntary and contentious jurisdiction. But in France and some other countries the *officialis* is one who exercises contentions, the *vicarius generalis* one who has but voluntary jurisdiction.[24] Though, *de facto*, both the *jurisdictio voluntaria* and the *jurisdictio contentiosa* may be—in fact, are sometimes—exercised by two different officials, yet, *de jure*, both are essentially exercisable by one and the same vicar-general.[25]

§ 2. *Appointment of the Vicar-General.*

625. We shall explain, 1, the qualifications requisite in a vicar-general; 2, by whom he is to be appointed; 3, whether the bishop is obligated to appoint a vicar-general, and whether he can have several; 4, in what manner the appointment is to be made. I. *Qualifications required in a Vicar-General.*—1. The vicar-general should be an ecclesiastic—that is, he should be, at least, tonsured—though he need not be in major or even minor orders.[26] 2. No ecclesiastic,[27] while actually married, can be appointed vicar-general. 3.

[22] Cfr. Leuren., l. c., qu. 74. [23] Bouix, l. c., p. 376.

[24] Craiss., n. 1134. In the United States the term *officialis* is almost unknown, and that of vicar-general is the only one used.

[25] Bened. XIV., De Syn., l. iii., c. iii., n. 2.

[26] The *schema* of the *Vatican Council*, "de vicario generali," says: Expedit etiam ut vicarii generales *sacerdotali sint charactere insigniti* (Martin, Docum. Conc. Vatic., p. 128).

[27] We here speak, of course, only of those ecclesiastics who are not yet in major orders, and who, consequently, are allowed to marry (Bouix, De Jud., t. i., pp. 388, 389).

A vicar-general should be twenty-five years of age,[28] born in lawful wedlock; he should, moreover, be a doctor in theology or a licentiate in canon law. We ask: Can a religious be made vicar-general? It is certain that he cannot without the permission of his superior. But is the consent of the Holy See also required? Speaking in general, the question is disputed. The affirmative, which seems the more probable opinion, is based on the argument that no regular can reside out of his monastery (*extra claustra*) without permission from the Holy See. Bouix[29] adds that, at the present day, it is not unfrequently expedient to select the vicar-general from some religious community. Can a bishop, parish priest, rector of a seminary, or relative of the bishop be named vicar-general? 1. *A bishop* not actually in charge of a diocese may undoubtedly become the vicar-general of another bishop, both *in pontificalibus* and *in aliis spiritualibus*. 2. *No parish priest*, and, in general,[30] no clergyman having the care of souls, especially if it be outside the episcopal city, can be vicar-general. The reason is that the duties respectively of a vicar-general and pastor are so grave that, as a rule, they cannot be simultaneously fulfilled in a proper manner by the same person.[31] Hence, they are *officia incompatibilia*. Nevertheless, the appointment of a pastor as vicar-general, though illicit, would not seem to be invalid. 3. *Rectors of seminaries* should not be made vicars-general,

[28] The above *schema* of the *Vatican Council* enjoins "ut illud [*i.e.*, vicarii gen. officium] ecclesiasticis viris deferatur *non minoribus annis triginta*, et in jure saltem canonico doctoribus, vel alias quantum fieri poterit, ideonis" (Martin, l. c.)

[29] L. c., p. 393.

[30] The *schema* above quoted of the *Vatican Council* proposes: "Et quia necesse est ut a fori interni ministerio omnis pellatur suspicio quod ad externi fori possit adhiberi negotio, nec permittendum sit ut a suo munere quispiam abducatur, in quod incumbere totus debet, propterea episcopi *canonicis poenitentiariis, parochis, ceterisque curam animarum habentibus*, itemque obtrectationis vitandae causa, *suis fratribus aut nepotibus, vicarii generalis munus non committant*" (Martin, l. c.)

[31] Ferraris, V. Vicarius Generalis, art. i., n. 27.

because it is ordinarily impossible for them to properly discharge their duties toward the seminary without neglecting those of the vicar-generalship.[32] 4. Nor should relatives (*v.g.*, uncle, nephew, brother) of the bishop be named vicars-general. Can natives of the episcopal city or of the diocese be made vicars-general? According to Cardinal de Luca, the bishop is bound to name as his vicar-general a stranger (*externs*)—that is, one who neither belongs to the clergy of his diocese nor is a citizen of the episcopal city. Bouix goes so far as to say that, *de jure communi*, it is unlawful for a bishop to appoint an ecclesiastic of his own diocese to the vicar-generalship, save by Papal dispensation.[33] The *jus commune* in this respect still obtains, and should consequently be observed, except, perhaps, in some countries where it may have been abrogated by contrary custom lawfully prescribed.[34] However, the appointment of a diocesan ecclesiastic, though illicit, is valid. *Customs in the United States.*—Generally pastors, especially those of cathedrals, and sometimes rectors of seminaries, owing chiefly to the scarcity of priests, are appointed vicars-general. As a rule, the vicar-general is selected from among the diocesan clergy.

626.—II. *Who has the power of appointment?* 1. Every bishop, no matter whether his diocese be large or small, can appoint a vicar-general, and that, at present, without the consent or even advice of his chapter.[35] 2. The administrator of a vacant diocese, as also the administrator of a diocese whose bishop is still living, may appoint a vicar-general for himself, because he is possessed of the ordinary jurisdiction of the bishop.[36] 3. The Holy See may—in fact, sometimes does—appoint a vicar-general—*v.g.*, where the bishop, though unable alone to govern his diocese, because of its extent and the like, nevertheless neglects to name a vicar-

[32] Craiss., n. 1143.

[33] Cfr. Leuren., For. Benef. Tr. de Vicario Gen. Episcopi, c. i., qu. 47.

[34] Ferraris, l. c., n. 34. [35] Leuren., l. c., qu. 20, 21. [36] Ib., qu. 24.

general. 4. In no case can the metropolitan appoint the vicar-general of a suffragan.[37] A bishop-elect[38] cannot appoint a vicar-general before he has taken possession of his see; he may, however, make the appointment prior to his consecration, provided he has taken possession of his see—that is, provided he has actually exhibited the bulls of his elevation. III. *Obligation of appointing a Vicar-General.*—Is a bishop obligated to have a vicar-general? The question is controverted. According to Bouix and others, a bishop,[39] if he resides in his diocese, is not bound to appoint a vicar-general unless the Holy See commands him to do so. We say, if he resides in his diocese; for if he were absent from his see, he would be obliged to name a vicar-general, in order to ensure unity of government during his absence. Can the bishop have several vicars-general? 1. It is certain that no bishop, however extensive his diocese may be, *is obliged* to have two or more vicars-general.[40] The only exception occurs in dioceses where the diocesans are of different languages and rites—*v.g.*, Greek and Latin rites;[41] for, in this case, the bishop is bound to appoint a vicar-general, and that a bishop, for those of a different rite.[42] 2. It is even controverted whether a bishop *can*, as a rule, name several vicars-general. The affirmative—to wit, that several vicars-general,[43] each having jurisdiction *in solidum*, may

[37] Bouix, l. c., p. 405.

[38] Even though he has already received the bulls (Ferraris, l. c., n. 17).

[39] Especially if he is a canonist and has a small diocese (Phillips, Lehrb., p. 333).

[40] The *schema*, above quoted, of the *Vatican Council* says: "Quibus vero in dioecesibus plures vicarii generales deputari solent, hi *numerum duorum vel trium non excedant*, omnesque *in solidum seu aeque principaliter constituantur*, ne forte quae ab eorum singulis provisa gestaque fuerint, viribus careant. Vicariorum autem generalium, quos honorarios vocant, nomen et usus prorsus aboleatur." (Martin, l. c.) [41] Supra, n. 541. [42] Craiss., n. 1156.

[43] In case several are named, all of them must reside in the episcopal city. Ferraris, l. c., n. 9.

be appointed—is the more probable opinion. 3. We said, *as a rule;* for it is certain that a bishop can constitute several vicars-general, 1, where it is customary to do so; 2, where two dioceses, having been united into one (*dioeceses principaliter unitae*), are governed by the same bishop.[44] In the latter case, the bishop *may* have a vicar-general in each diocese; nay, if the two dioceses are at a considerable distance from each other, he is *bound* to have one in the diocese where he does not reside. IV. *Mode of Appointment.*—The vicar-general may be validly constituted *orally*, and it is not absolutely necessary that his appointment should be made *in writing.* We say, *not absolutely;* because letters of appointment are required in order to prove the authority of the vicar-general, if called in question. Hence, it is advisable that he be *always* appointed by letters-patent (*scriptura publica et solemnis*)—that is, by an official instrument, not merely by private letters.[45]

§ 3. *Powers of the Vicar-General.*

627. The vicar-general, by virtue of his appointment (*eo ipso quod constituatur V. G.*), can, as a rule,[46] do what the bishop himself can do *de jure ordinario.*[47] For, as was seen, his jurisdiction is the same as that of the bishop; *per se*, therefore it is in every respect as great, as unlimited, and as universal as is the ordinary jurisdiction of the bishop himself.[48] We say, *per se;* that is, unless restricted, 1, by ecclesiastical law; 2, or by the bishop. Hence, in order to ascertain the extent of the powers vested in the vicar-general by his very appointment, the question is not so much what powers has he as what powers has he not. Once we have learned what restrictions have been placed on his jurisdiction, either by canon law or by the bishop, and, con-

[44] Leuren., l. c., qu. 31. [45] Ib., qu. 35. [46] Ferraris, l. c., art. ii., n. 3.
[47] Leuren., l. c., c. iii., qu. 96, 98. [48] Bouix, De Judic. Eccl., tr. i., p. 414.

sequently, what he cannot do, we know by inference what he can do—to wit: He can do generally what the bishop himself can do. Hence we ask: In what things or how far has canon law restricted the jurisdiction vested in the vicar-general by virtue of his appointment (*vi officii sibi generaliter commissi*[49])? Chiefly thus: 1, by prohibiting him from acting validly in certain cases without a special mandate from the bishop; 2, by enacting that he cannot proceed in some things even with a special mandate from the bishop. I. *Chief Cases where the Vicar-General cannot act validly save by a Special Mandate from the Bishop.*—1. The vicar-general, even though he be a bishop, cannot perform actions of the *ordo episcopalis—v.g.*, blessing holy oils, giving confirmation, consecrating churches or altars, and the like. Nor can he grant letters dimissory for the reception of orders, except when the bishop is *in remotis regionibus* and will not return for a long time. 2. *In materia beneficiali;* he cannot confer benefices, although, according to some, he can appoint to parishes those who, having made the *concursus*, are found to be the *personae digniores*.[50] In the United States, however, according to Kenrick,[51] vicars-general (except the bishop disposes otherwise) can give priests faculties, together with the care of souls, as also revoke them for just reasons.[52] He cannot erect, unite, or divide benefices or parishes,[53] nor can he give another bishop permission to exercise *pontificalia* in the diocese. 3. In regard to the *jurisdictio contentiosa*, he cannot take cognizance of the graver causes or crimes of ecclesiastics, and consequently he cannot depose them *ab ordine* or *a beneficio* (*v.g.*, parish). 4. Nor can he absolve from suspensions incurred *ex delicto occulto*, nor from other cases reserved to the Holy See; nor from sins reserved to the bishop *solely*,[54] either by the bishop himself or by ecclesi-

[49] Ferraris, l. c., n. 3. [50] Cfr. Craiss., n. 1162. [51] Tr. viii., n. 42.
[52] Konings, n. 1146 (2). [53] Ferraris, l. c., n. 29, 34, 28.
[54] Leuren., l. c., qu. 130, 131.

astical law[55] (*v.g.*, in the *C. Ap. Sedis* of Pope Pius IX. or in the Council of Trent, sess. xxiv., c. vi., d. R.) 5. Generally speaking, he cannot dispose of matters of a grave character (*causae arduae, res graves*).[56] 6. Nor can he do those things which fall under the bishop's jurisdiction, not *de jure communi* or *de jure ordinario*, but by virtue of the *jus speciale*. Thus, vicars-general in the United States can exercise the ordinary, but not, except by special mandate, the extraordinary, faculties of our bishops. II. *Chief Cases where the Vicar-General cannot proceed validly, even with a Special Mandate from the Bishop.*—1. The bishop cannot confer upon his vicar-general power to absolve from occult heresy. Protestants, however, who apply for admission into the Church, may be absolved by the bishop *or* his *delegatus*;[57] the reason is that, by applying for admission into the Church, their *haeresis* becomes *deducta ad forum episcopi*, and thus ceases to be occult.[58] 2. The bishop cannot empower his vicar-general (unless he be a bishop) to perform those actions for which, *jure divino*, the *ordo episcopalis* is required—*v.g.*, the conferring of major orders; neither can he, except by leave from Rome, authorize his vicar-general (who is not a bishop) to do those things for which the *ordo episcopalis* is necessary only *jure ecclesiastico*—*v.g.*, to perform the blessing of abbots and blessings in general, where the holy oils are used.[59] Bishops in the United States have power from the Holy See to authorize not only vicars-general, but also other priests, to consecrate chalices and altar-stones, to bless bells,[60] sacred vestments, to absolve from occult heresy. Moreover, the *facultates extr. D. and E.* may be delegated[61] by our bishops to two or three worthy priests *in remotioribus locis dioecesis*, as also to vicars-general

[55] Konings, n. 1146 (6). [56] Phillips, Lehrb., p. 335. [57] Supra, n. 580.
[58] Craiss., n. 1168. [59] Leuren., l. c., qu. 113.
[60] Fac. Extr. C., n. 6, 12; Fac. form. i., n. 13.
[61] "Pro aliquo tamen numero casuum urgentiorum."

in case bishops are to be absent more than a day from their residence.[62]

628.—I. To what matters does the ordinary jurisdiction of vicars-general chiefly extend without any special mandate from the bishop? We premise: The jurisdiction of vicars-general is not so extensive as that of vicars-capitular, *sede vacante* (with us, administrators); for the latter can do many things which the former cannot, save by special mandate.[63] We now answer: 1. The vicar-general has the right to concur cumulatively with all the pastors of the diocese in the administration of the sacraments and in preaching.[64] 2. He may, by virtue of his appointment, hear sacramental confessions and also give other priests faculties to do so.[65] 3. He can appoint in his stead a *delegatus* for one or several matters, but not[66] *quoad universitatem causarum.* 4. He can compel pastors to take as many assistants as are necessary for the parish. 5. He may dispense from all the proclamations of the banns.[67] II. Is the vicar-generalship an ecclesiastical dignity? By a *dignitas*, in the strict sense, is not meant every office to which precedence and jurisdiction are attached, but only an office that is *permanently* vested in a person, and to which precedence and jurisdiction are annexed. In a broad sense, a *dignitas* is an office *ad nutum revocabile*, having jurisdiction and precedence attached. As the vicar-general is removable *ad nutum episcopi*, he is an ecclesiastical dignitary only in a broad sense.[68] Vicars-general are also accounted by some *praelati minores.*

629. How does the vicar-general's jurisdiction expire? Chiefly in three ways:[69] I. *By will of the bishop*—namely, by his removing the vicar-general. A vicar-general being *re-*

[62] Fac. Extr. D., n. 8; Fac. Extr. E., n. 4; ap. our Notes, pp. 473, 475.
[63] Leuren., l. c., qu. 97. [64] Ib., qu. 118.
[65] Ferraris, l. c., art. ii., n. 11, 12, 13.
[66] Except by special mandate (cfr. Craiss., n. 1176).
[67] Leuren., l. c., qu. 161. [68] Bouix, l. c., p. 440. [69] Soglia, t. ii., p. 27.

vocabilis ad nutum episcopi may be validly removed *without cause*, but not licitly, except *ex gravi et justa causa;* and if removed without such cause, he may be reinstated by the Holy See.[70] II. *By will of the vicar-general himself*—that is, by his express or tacit resignation. He resigns tacitly by leaving the diocese with the intention of not returning. III. *By the lapse of the bishop's jurisdiction.* Now, the bishop loses jurisdiction, 1, by death. We observe, however, the vicar-general's jurisdiction expires at the bishop's death only in regard to matters delegated[71] to him under his *official title only—v.g.*, thus: "Committimus hanc causam *vicario generali Neo-Eboracensi*," . . . but not in regard to matters committed to him personally or under his *baptismal* or *family name—v.g.*, thus: "Committimus hanc causam *Jacobo Murphy*, vicario generali Neo-Eboracensi." For, respecting the latter cases, he retains jurisdiction even after the bishop's death, or after being removed from the vicar-generalship.[72] The bishop loses jurisdiction, 2, by resigning his see; 3, by being transferred to another bishopric; 4, when taken captive (namely, by pagans, heretics, and schismatics); 5, by being excommunicated, suspended, or interdicted; 6, by being deposed. In whatever manner, therefore, the bishop's jurisdiction lapses, that of the vicar-general—except, as stated, in cases delegated to him personally—also expires, and that even in regard to matters already taken in hand (*re non amplius integra*) by him.[73] Herein a vicar-general differs from a mere *delegatus;* for the latter's jurisdiction expires at the death of the *persona delegans*, only in regard to matters not yet engaged in (*re adhuc integra*), but not in respect to things already undertaken.

630.—I. By whom is the salary of the vicar-general to be paid? 1. *De jure communi*, by the bishop, out of his own

[70] Ferraris, l. c., art. iii., n. 29.

[71] Whether by the bishop or the Holy See. Craiss., n. 1181.

[72] Leuren., l. c., qu. 298.

[73] Soglia, l. c., p. 27.

income (*ex sua camera*).[74] The salary due the vicar-general at the time of the bishop's death should be paid him by the vicar-capitular out of the revenues of the vacant see. 2. In France and some other countries he is paid by the government. 3. In the United States vicars-general are usually also pastors, and do not, as a rule, receive a special salary for the discharge of their duties as vicars-general. II. When are the excesses and the ignorance of a vicar-general imputable to the bishop? 1. The bishop is not responsible for delinquencies of which his vicar-general is guilty *extra officium suum*—that is, as a private person.[75] 2. Excesses or mistakes committed by the vicar-general in his official capacity—*i.e.*, in the exercise of his authority—are to be imputed to the bishop if he appoints or retains in office a vicar-general whose bad character or ignorance *is* or *should* be known to him; nay, a bishop, in this case, is even bound to make restitution for injuries caused by unjust and uncanonical acts of his vicar-general.[76] For he is bound to appoint a virtuous as well as a learned and experienced vicar-general. III. By whom is the vicar-general punishable for his offences? His offences relate either to his private or official conduct. 1. If he commits crimes as a private person, he is punishable, like others, by his bishop, not by the metropolitan, save on appeal.[77] 2. But if he is delinquent in the discharge of his duties as vicar-general (*in officio et jurisdictione*) he is to be punished, according to some, by the metropolitan, not by his bishop;[78] according to others, by the bishop, unless the latter is an accomplice of the vicar-general.

[74] Craiss., n. 1183.
[75] Bouix, l. c., pp. 445, 448.
[76] Leuren., l. c., qu. 301.
[77] Leuren., l. c., qu. 300, n. 1, 2, 3.
[78] Bouix, l. c., p. 453.

Art. II.

Of Archdeacons and Arch-Priests.

631. As both these dignities have substantially ceased to exist, we shall but briefly refer to them. I. *Archdeacons.* 1. *Their office in former times.*—Archdeacons (*archidiaconi*) were formerly those who assisted the bishop in the exercise of his external jurisdiction and in the administration of the diocese.[79] Their power was similar to that of vicars-general at the present day, by whom they were superseded. Their jurisdiction was ordinary, and, though inferior to, was yet independent of and distinct from, that of the bishop.[80] They were not removable *ad nutum episcopi.* Down to the thirteenth century their authority steadily increased. Not unfrequently, however, they abused their power, which was, in consequence, greatly diminished by the Council of Trent.[81] 2. *Rights of Archdeacons at present.*—Their office is almost entirely abolished, being reduced to assisting the bishop at ordinations and presenting the *ordinandi.* Hence, where archdeacons still exist, they retain merely the name, not the power formerly attached to their office. Vicars-general now take their place. II. *Arch-Priests.*—1. *Their office or power in former times.*—The arch-priest (*archi-presbyter*) occupied the chief place among priests. It was his duty to assist the bishop in those things which related to the *sacra ministeria* (*i.e.*, the administration of the sacraments) and the *forum internum.* The chief difference, therefore, between arch-priests and archdeacons was this: The former had jurisdiction *in foro interno* only; the latter *in foro externo.* There were two kinds of arch-priests: namely, the *archi-presbyteri urbani*—that is, those who lived in the episcopal

[79] Soglia, t. ii., pp. 22, 23.

[80] Phillips, Lehrb., p. 329.

[81] Sess. xxiv., c. v., xii., xx., d. R.

city or at the cathedral; and the *archi-presbyteri rurales*—namely, those who were appointed for country districts.[82]

2. *Rights of Arch-Priests at present.*—Their powers met with the same fate as those of archdeacons. Hence, the rights formerly possessed by arch-priests are now almost everywhere extinct. The *archi-presbyteri urbani* have been superseded by the auxiliary bishops of the present day; the *archi-presbyteri rurales* by the present *vicarii foranei* or rural deans.[83]

Art. III.

Rural Deans.

632. By rural deans (*decani rurales, vicarii foranei*) we mean those pastors who are permanently deputed by the bishop to expedite matters of minor importance in certain districts of the diocese.[84] We say, *permanently;* thus, we distinguish them from those *delegati* who are delegated either for a particular case only, or but temporarily for a certain kind of matters. Rural deans are also named *vicarii foranei* because they are appointed for districts situate *extra fores—i.e.*, outside the city in which the bishop resides.[85] They may be chosen by the pastors of their district or *decania;*[86] this election is, of course, subject to the approval of the bishop. Their chief duties, especially in the United States, are: To take care of sick and attend to the burial of deceased priests in their district; to preside in theological conferences, settle minor disputes, and, in general, to inform the bishop once a year, or oftener, of all important ecclesiastical affairs relating to their district.[87] The jurisdiction of

[82] Devoti, lib. i., tit. iii., n. 75.
[83] Soglia, l. c., p. 23.
[84] Phillips, l. c., p. 340.
[85] Leuren., l. c., qu. 11, 12.
[86] Except where custom has reserved this right to the bishop (Phillips, l. c., p. 341).
[87] Conc. Pl. Balt. II., n. 74.

rural deans is delegated; though it can scarcely be said that, at present, they have any real jurisdiction at all. It is allowed to appeal from them to the bishop, or, *sede vacante*, to the capitular vicar or administrator.[88] Finally, they are removable *ad nutum* either by the bishop or vicar-capitular.

[88] Ferraris, V. Vicar. Gen., art. iv., n. 19, 20.

CHAPTER VIII.

ADMINISTRATION OF VACANT DIOCESES—"DE ADMINISTRATIONE DIOECESIS, SEDE VACANTE."

633. We shall treat, 1, of the government of a diocese, *sede vacante*, as laid down by the *jus commune*, and as existing in countries where dioceses are fully organized, and where, consequently, there are chapters. 2. Next we shall discuss the manner in which vacant dioceses are governed in the United States.

ART. I.

Administration of Vacant Dioceses in Countries where the "Jus Commune" obtains.

§ 1. *Upon whom the Government of a Diocese, "sede vacante," devolves.*

634. In how many ways may an episcopal see fall vacant? In three: *Proprie*, *quasi*, and *interpretative*.[1] I. A see falls vacant, in the proper or strict sense of the term (*sedes vacat proprie*, *sede proprie vacante*), 1, when the bishop dies; 2, or is transferred to another see; 3, when he resigns; 4, or is deposed; 5, or has become *notorie haereticus*. II. A see becomes quasi-vacant (*sedes quasi vacat*, *sede impedita*) when, by reason of some hindrance, its bishop is prevented from administering it. A diocese is said to be quasi-vacant, 1, if the bishop is made captive, or, rather, reduced to slavery by

[1] Craiss., n. 1216

pagans and schismatics.[2] Two exceptions, however, are to be admitted: (*a*) if the bishop, notwithstanding his permanent captivity or slavery, is able to communicate by letter with his chapter; (*b*) if he has left a vicar-general in the diocese. We said, *by pagans and schismatics;* for if a bishop is imprisoned or banished by the civil government to which he is subject, his see does not become even quasi-vacant,[3] but is to be governed during his absence by the vicar-general. In fact, to declare a see vacant whose bishop is exiled or imprisoned for defending the rights of the Church would be, as Pope Gregory XVI. wrote to the chapter of Cologne, to connive at the unjust measures of the civil power. 2. A see, moreover, becomes quasi-vacant if the bishop is far from his diocese (*in remotis*), and his vicar-general meanwhile dies or leaves the diocese, is ejected by the civil government, or is in some other way prevented from acting as vicar-general; if, however, the bishop has provided for these contingencies, the see does not fall vacant.[4] III. A see falls vacant *interpretative* when its bishop becomes excommunicated, suspended, or *inhabilis*.

[2] *V.g.*, Turks and Saracens (Craiss., n. 1217); also heretics. Cfr. Ferraris, V. Capitulum, art. iii., n. 32.

[3] Thus the Holy See, in 1838, decided, in the case of Droste de Vischering, Archbishop of Cologne, who had been imprisoned by the Prussian Government in 1837; as also in the case of the Neapolitan bishops driven from their sees by the Sardinian Government. See *Decretum S. C. Episc. et Regul.*, May 3, 1862, *de Nullitate Electionis Vicarii Capit. Vivente Episcopo* (ap. Phillips, Lehrb., p. 322). This decree was sent to *all* the chapters, to serve as a rule of action for the future in *all similar cases*. The *schema* of the Vatican Council, De Sed. Ep. Vac., proposes to confirm this decree in these words: Sede vero per episcopi captivitatem vel relegationem aut exilium impedita, illius regimen *penes episcopi vicarium* (*generalem*), *vel quemlibet alium virum ecclesiasticum ab episcopo delegatum remaneat*, donec aliter ab hac Sede Apostolica provideatur. Iis autem deficientibus vel impeditis, capitulares vicarium constituent, totiusque rei eventum quamprimum ad ejusdem S. Sedis notitiam deferent, recepturi humiliter, et efficaciter impleturi quod per ipsam contigerit ordinari (Martin, Docum. p. 134).

[4] Leuren., l. c., qu. 447, n. 3.

635.—I. To whom belongs, *de jure communi*, the administration of a diocese, *sede vacante?* 1. If a diocese is vacant, in the strict sense of the term (*sede proprie vacante*), it is certain that its administration, for the whole time of the vacancy,[5] belongs *de jure communi*, not merely by privilege or delegation, to the cathedral chapter. 2. If it falls quasi-vacant (*sede quasi vacante*), it is controverted whether or not its administration devolves upon the chapter. According to some, it does in *all cases* of quasi-vacancy.[6] According to others, a distinction must be made, as follows: If a diocese becomes quasi-vacant by reason of its bishop being made a captive or slave by pagans or schismatics, the administration belongs to the chapter, though only provisionally—that is, until the Holy See, having been duly informed by the chapter, either confirms the *vicarius* appointed by the chapter or names a *vicarius apostolicus*. In all other cases of quasi-vacancy, Phillips[7] contends, the duty of the chapter consists merely in reporting without delay the state of affairs to the Holy See, by whom extraordinary provisions, if necessary, are to be made. 3. It is certain that if a see falls vacant *interpretative*, its administration does not devolve upon the chapter, but recourse must be had to the Holy See. II. Can the chapter itself—*i.e.*, in a body or collectively—administer a diocese during its vacancy? At present[8] it cannot, but is bound, within eight days after it is informed of the vacancy, to elect a vicar (*vicarius capitularis*, *vicarius capituli*), who administers the diocese in the name of the chapter. Should it neglect doing so, this duty will de-

[5] Bouix, De Capit., p. 482.

[6] Leuren., l. c., qu. 447. This opinion seems untenable at present, as is evident from the above decree of the S. C. Episc., issued in 1862 (cfr. *schema* "De Sed. Ep. Vac.," c. ii., of the *Vatican Council*).

[7] L. c., § 161; cfr. Ferraris, l. c., n. 36.

[8] Formerly it could do so (Leuren., l. c., qu. 467).

volve on the metropolitan.[9] The administration, therefore, of a vacant diocese belongs no longer, as formerly—except for the first eight days of the vacancy—to the *entire* chapter, but is to be committed to *one* person, the *vicarius capituli*. We say, *except for the first eight days;* for, during this time, the administration still belongs to the *whole chapter in solidum—i.e.*, collectively—but not to the *prima dignitas*.[10] Besides choosing a vicar-capitular for the exercise of the *jurisdictio ordinaria episcopalis—i.e.*, for the administration proper[11]—the chapter is bound to appoint one or more procurators (*oeconomus*), whose duty it is to take care of the property and revenues of the vacant diocese. In the United States no such procurators or administrators of the temporalities of vacant dioceses are appointed. Vacant sees are usually governed, with us, both *in temporalibus* and *spiritualibus*, by one and the same administrator. III. Can the chapter appoint *several* vicars-capitular? At the present day but one capitular vicar can be chosen.[12] Nevertheless, the custom, if legitimately prescribed, of electing two or more, may be tolerated. Only a competent person (*idoneus*) should be appointed vicar-capitular; he should, if possible, be a doctor in canon law, not merely in theology.[13] He cannot be appointed by the chapter, only for a limited time—*v.g.*, for three months; for, once appointed, he remains in office so long as the vacancy lasts.[14] Nor is he removable by the chapter. He should, if practicable, be selected from among the canons of the cathedral chapter. Moreover, he should be elected by the chapter when capitularly assembled;[15] secret suffrage is not essential, though advisable. A majority vote is requisite to elect the vicar; a mere plurality of votes is insufficient. He could, however, be validly elected

[9] Conc. Trid., sess. xxiv., c. xvi., d. R.
[10] Ferraris, l. c., n. 30.
[11] Phillips, l. c., p. 317.
[12] Leuren., l. c., qu. 547, n. 3.
[13] Craiss., n. 1232.
[14] Bouix, l. c., p. 510.
[15] Ferraris, l. c., n. 39.

by several canons—nay, even by one—in case the rest, *v.g.*, had died or become disqualified to vote.[16]

§ 2. *Of the Powers Vested in the Chapter or Vicar-Capitular, "Sede Vacante."*

636.—I. *Rights of Chapters and Vicars-Capitular in general.*—1. The entire government of the diocese, and the whole *jurisdictio ordinaria* of the bishop, both *in temporalibus* and *in spiritualibus*, pass to the chapter, *sede vacante*, and may be exercised by it, save in regard to matters excepted by the *jus commune* or specially withheld by the Roman Pontiff.[17] Now, this *jurisdictio ordinaria episcopalis*, as exercised by the chapter for the first eight days of the vacancy, passes entirely[18] to the vicar-capitular as soon as he is properly chosen. We say, *entirely;* for it becomes, at least as far as its exercise is concerned, vested *solely* and *exclusively* in the vicar-capitular,[19] not jointly in him and the chapter. Hence, it is not necessary that we should, as some canonists do, treat separately of the rights of the chapter and those of the vicar-capitular; for whatever is said of the one is equally applicable to the other. 2. Again, jurisdiction is divided, 1, into contentious and voluntary; 2, into jurisdiction *ex jure communi* and *ex jure speciali;* 3, into jurisdiction *ex jure* and *ex consuetudine;* 4, into ordinary and delegated; 5, into jurisdiction respecting matters that do or do not require the *ordo episcopalis*.[20] Now, the chapter or vicar-capitular, speaking in general, succeeds, 1, to the entire contentious, and probably also voluntary, jurisdiction; 2, to all those rights

[16] Craiss., n. 1248.

[17] Leuren., l. c., qu. 457.

[18] Bouix, l. c., p. 550. The *schema* of the Vatican Council, "De Sed. Ep. Vac., c. i.," also expresses this: "In vicario autem constituendo *nullam sibi jurisdictionis partem capitulum retinere quomodocunque possit*" (Martin, l. c., p. 134).

[19] He becomes, therefore, so to say, the bishop of the diocese for the time being (Phillips, l. c., p. 318).

[20] Bouix, l. c., p. 556.

which are, either by privilege or custom, permanently attached, not to the person of the bishop, but to the see; 3, to the *jurisdictio delegata* of the bishop, in those cases where the bishop is authorized by the Council of Trent to act "*etiam* tanquam Sedis Apostolicae delegatus," but not where he acts simply *tanquam*, etc.; 4, finally, neither chapters nor vicars-capitular can perform acts of the *ordo episcopalis—i.e.*, functions for which the *ordo episcopalis* is required—although they may authorize or invite other bishops to do so in the vacant diocese.

637.—II. *Rights of Chapters and Vicars-Capitular in particular.*—I. Vicars-capitular can, 1, enact statutes for the entire diocese and enforce them by penalties;[21] 2, inflict all the censures which the deceased bishop could inflict;[22] hence, they can excommunicate, suspend *ab officio* and *a beneficio;* 3, absolve from all censures from which the bishop himself could absolve;[23] hence, they can absolve from excommunications, whether imposed *a jure* (provided they are not reserved to the Holy See)—*v.g.*, for striking an ecclesiastic—or *ab homine—v.g.*, by the deceased bishop or his vicar-general; 4, as a matter of course, they can absolve from censures inflicted by themselves or by chapters; 5, they can absolve *in foro conscientiae* from all occult cases reserved *simpliciter* to the Holy See—nay, from all censures whatever in the case of those who cannot recur to the Holy See for absolution;[24] 6, they can also absolve from all cases reserved to the bishop; 7, and give faculties to hear confessions.[25] II. What are the chief things the chapter or vicar-capitular cannot do, *sede vacante?* It is a general rule that, *sede vacante*, no innovations should be made which would in any way be prejudicial to the rights of the future bishop.[26] In fact, the very nature of an interregnum demands that those who

[21] Leuren., l. c., qu. 470. [22] Ib., qu. 475. [23] Ib., qu. 476.
[24] Ib., qu. 476, 477. [25] Ib., qu. 483. [26] Phillips, l. c., p. 319.

govern during the vacancy should make no innovations whatever, but merely expedite such matters as do not admit of delay. Hence, vicars-capitular, 1, cannot appoint to vacant parishes,[27] though they can hold the *concursus*, select the *persona dignior* and present him to the Pope, to whom alone the appointment belongs during the vacancy of the see;[28] 2, nor can they, during the first year of the vacancy, give *litteras dimissorias ad ordines* (*i.e.*, letters dimissory enabling ecclesiastics to receive orders from bishops of other dioceses), except to ecclesiastics who are obliged[29] to receive orders (*clericis arctatis*). When the see has been vacant one year, letters dimissory may be given to *all* ecclesiastics.[30] 3. They may, however, according to the more common opinion, give *exeats* (*litterae excorporationis*) at any time during the vacancy, provided there be a *causa gravis*.[31]

[27] The *schema*, above quoted (c. ii.), of the *Vatican Council* proposed: "Cum experientia doceat, quosdam vicarii munus adeptos ambitiosa sollicitudine multa properanter disponere, futuri episcopi consilia ac regimen praeoccupantes, quandoque etiam hujus Ap. Sedis jura invadentes, nos, sacro approbante concilio, vicarii cap. facultates, intra sacrorum canonum limites omnino contineri jubemus. Quapropter invectam quibusdam in locis consuetudinem ut *liberae collationis beneficia a vicario conferantur, tolerandam haud esse declaramus.* Quod si beneficia hujusmodi animarum curam adnexam habeant, vicarii erit, deputato statim oeconomo, concursum indicere, et illius acta ad hanc Apost. Sedem transmittere, ad quam collatio seu provisio pertinet, nisi aliter ab eadem pro locorum, temporum, ac personarum adjunctis provisum fuerit" (Martin, l. c.)

[28] Leuren., l. c., qu. 529, 530.

[29] Namely, on account of a benefice or parish to which they have been or are to be appointed (Soglia, l. c., p. 38).

[30] The above *schema* of the *Vatican Council* proposed that this should be done only with the consent of the chapter. It says: "In dimissoriis ad ordines a vicario post annum vacationis concedendis *capituli semper consensus per secreta suffragia requiratur et accedat; iis vero qui a proprio episcopo rejecti fuerint nunquam concedantur*" (Martin, l. c.)

[31] Craiss., n. 1270. The above *schema* of the *Vatican Council* proposed to revoke this right. It says: "Alienum clericum clero dioecesis adscribere, vel proprium ex eo dimittere vicarius nequeat, nisi ab hac Sede Apost. facultatem obtinuerit" (Martin, l. c.)

Vicars-capitular are entitled to a competent salary for their services as vicars-capitular, even though they have an income from other sources—*v.g.*, from canonships. This salary may be made up, *v.g.*, from chancery fees (*ex sigillo*) and, in general, from all revenues, no matter of what kind, which would belong to the bishop if the see were not vacant.[32] If not paid by the chapter, it must be paid by the bishop-elect out of the episcopal income which accrued during the vacancy. At the present day the jurisdiction of vicars-capitular lapses as soon as the bishop-elect has exhibited the bulls of his appointment.[33]

Art. II.

Administration of Vacant Dioceses in the United States.

638.—I. *Appointment of Administrators in the United States.*—1. If the vacancy is caused by the death of the bishop, the administrator may be appointed by the bishop

[32] Leuren., l. c., qu. 613, 614, 615.

[33] In regard to the exhibition of the Papal letters of his appointment by the bishop-elect, Pope Pius IX. (*C. Ap. Sedis*, 1869) enacted : "Suspensionem ipso facto incurrunt a suorum beneficiorum perceptione, ad beneplacitum S. Sedis, capitula et conventus ecclesiarum et monasteriorum, aliique omnes qui ad illarum seu illorum regimen et administrationem recipiunt episcopos aliosve praelatos de praedictis ecclesiis seu monasteriis apud eandem S. Sedem quovis modo provisos, *antequam ipsi exhibuerint litteras apostolicas de sua promotione.*" Pope Pius IX. also renewed (*C. Rom. Pontifex*, 1873) the *jus commune* forbidding those who are nominated or presented for bishoprics to administer such dioceses, even as vicars-capitular or administrators, *before they have exhibited the bulls of their appointment.* The *schema* D. Ep. S. Vac. of the *Vatican Council* proposed to confirm the same, adding that, if the one who was vicar-capitular at the time happened to be nominated or presented, he should, *eo ipso*, on being informed of this, cease to administer the diocese for which he was nominated (Phillips, Comp., § 160, note 12, ed. Vering, Ratisb., 1875).

himself before his death.[34] Should this have been omitted, the metropolitan,[35] or, in case of his not doing so, the senior suffragan, will designate the administrator.[36] The senior suffragan also appoints the administrator of a vacant metropolitan see, if no priest was appointed by the archbishop before his demise. 2. If a see becomes vacant in any other manner than by the death of its bishop—*v.g.*, by his resignation, translation, etc.—then the metropolitan, or, in his default, as also when the metropolitan see itself falls thus vacant, the senior suffragan, will designate a competent ecclesiastic to govern the diocese *ad interim*. 3. In all these cases the appointment is merely provisional, the Holy See having reserved the right of either confirming or altering it.

[34] Conc. Pl. Balt. II., n. 96. [35] Ib., n. 97.

[36] The third chapter of the above *schema* of the *Vatican Council* proposes to renew, in regard to the administration of dioceses falling vacant by the death of the bishop in countries situate far from Europe, the regulations of Benedict XIV., Const. Quam ex Sublimi, August 8, 1755. The *schema* says: Attendentes imprimis in remotis ejusmodi regionibus aliquos archiepiscopos et episcopos locorum ordinarios et residentiales capitulum canonicorum habere, alios vero eo esse distitutos, mandamus ut, eveniente cujuslibet antistitis obitu, statim procedatur ad electionem vicarii capitularis juxta morem, usum, et consuetudinem hactenus legitime servatam; nimirum, 1, ubi capitulum existit, vel a canonicis duntaxat, si ita in more jam sit positum, vel a canonicis una cum aliis ecclesiasticis viris, quos in casibus hujusmodi semper intervenisse et suffragium suum in ea electione tulisse constat. 2. Ubi autem capitulum canonicorum non habetur, ibi parochi, sive soli, sive cum aliis ecclesiasticis viris juxta modum itidem, usum et consuetudinem de praeterito servatam, ad vicarii capitularis electionem habendam accedant. In ceteris omnibus autem servari mandamus Trid. C. de vicarii cap. electione constitutiones. 3. In iis vero locis in quibus antistites ordinarii eorundem locorum residentiales neque capitulum canonicorum, neque parochos in suis civitatibus et dioecesibus habent, sed duntaxat sacerdotes aliquot et missionarios per terras et oppida dispersos, ita ut, antistite decedente, una simul convenire haud valeant, vicarius generalis jam a defuncto antistite constitutus, licet doctoris gradu in jure canonico auctus non sit, ipso facto intelligatur et habeatur tanquam vicarius capitularis cum omnibus facultatibus de jure ad ejusmodi munus spectantibus, illudque exerceat quousque novus antistes ab Ap. hac Sede designatus illuc advenerit, ac susceperit, vel aliter ab eadem fuerit ordi-

II. *Powers of Administrators in the United States.*—1. The *facultates* of our bishops contained in the *form. I.*, excepting those which require the *ordo episcopalis* or the use of the holy oils,[37] can be conferred upon administrators by the bishop, or, as the case may be, by the archbishop or senior suffragan. 2. As to the other *facultates*, the Second Plenary Council of Baltimore[38] requested the Holy See, "ut episcopus, aut, prout casus feret, metropolita vel senior episcopus possit presbytero sedis vacantis administratori tribuere *eas omnes facultates tam ordinarias quam extra-ordinarias, quibus gaudent episcopi ex Sanctae Sedis concessione.*" No answer was returned by Rome. The same request was afterward renewed by the Tenth Provincial Council of Baltimore (an. 1869), and was provisionally granted by the Holy See in these words: "Sanctitas sua, licet ea super re nil pro nunc decernendum expresserit, voluit tamen, ut si quam interim

natum. 4. Omnibus autem vicariis apostolicis, sive titulo et dignitate episcopali praeditis, sive sacerdotali tantum charactere insignitis, sed neque coadjutorem cum futura successione neque vicarium generalem habentibus praecipimus, ut unusquisque eorum teneatur deputare vicarium ex clero sive saeculari sive regulari, habilem tamen atque idoneum. Is vero post vicarii apostolici obitum tamquam hujus S. Sedis delegatus assumet regimen vicariatus, et in ejusmodi munere permanebit, donec novus Ap. vicarius ab eadem S. Sede designatus ipsius vicariatus possessionem et regimen adierit, vel usque ad quamcunque aliam ab ipsa ineundam ordinationem ; idemque pariter alterum statim deputabit ecclesiasticum virum, qui ei, si forte interim obierit, in munere succedere debeat. Volumus autem pro-vicarios hujusmodi, non solum iis omnibus et singulis uti posse facultatibus, quae cujusvis ecclesiae cathedralis vicario capitulari de jure competere dignoscuntur, verum etiam iisdem frui facultatibus, quibus defunctus vicarius apostolicus pollebat, iis duntaxat exceptis, quae requirunt characterem episcopalem, vel non sine sacrorum oleorum usu exercentur; eidem tamen potestatem facimus ut, quandocunque necessitas urgeat, possit consecrare calices, patenas, et altaria portabilia, cum sacris oleis ab Episcopo benedictis (Martin, l. c., pp. 135, 136 ; cfr. Ferraris, V. Vicar. Cap., art. ii , n. 101).

[37] Fac., form. i., n. 28 ; C. Pl. B. II., n. 97. [38] N. 98.

ex tuae provinciae[39] dioecesibus vacare contigerit, administrator, sede vacante, donetur facultatibus extraordinariis contentis sub formulis C. D. E., exceptis iis, quae characterem episcopalem requirunt.[40]

[39] Hence, this concession was given for the province of Baltimore only, not for the whole United States.

[40] Ap. Coll. Lac., tom. iii., p. 599; cfr. ib., pp. 577, 584, 585, 596, 599.

CHAPTER IX.

OF PARISH PRIESTS—THEIR RIGHTS AND DUTIES.

ART. I.

Nature of the Office of Parish Priests as at present understood—Mode of Appointment, etc.

§ 1. *Errors respecting the institution of Parish Priests.*

639. Gerson, chancellor of the Sorbonne, was the first who, in the beginning of the fifteenth century, maintained that parish priests were instituted by Christ himself.[1] This is erroneous; for, 1, in the first three centuries of the Church there were no parishes or parish priests in any part of the world. There was, in fact, but one church in the principal city of the diocese—*i.e.*, in the city where the bishop resided. To this church all the faithful, not merely of the city itself, but also of the neighboring villages, went on Sundays to assist at Mass and receive the sacraments.[2] To the absent holy communion was brought by the deacons. When the faithful became more numerous, other churches were indeed built, even in the episcopal city; but services were performed there by priests from the cathedral, not by parish priests—*i.e.*, not by priests *permanently appointed* (*per modum stabilis officii*) to exercise the *cura animarum* over determinate congregations.[3] Hence, there was but one parish in each diocese—namely, the cathedral. The bishop was, so to say, the parish priest of, and exercised the *cura* through-

[1] Bouix, De Paroch., p. 82. Paris, 1867. [2] Devoti, l. i., tit. iii., n. 87, 88.
[3] Bouix, l. c., pp. 13, 22.

out, the whole diocese, either personally or, when impeded, through his priests.[4] 2. It was only after the third century that parishes came to be established, and that, at first, in rural districts only,[5] and, later on (*i.e.*, after the year 1000), also in cities.[6] 3. Hence, parish priests are merely of ecclesiastical, not of divine, institution. Nor is the contrary provable from Sacred Scripture. For the word *presbyteri*, as mentioned in the texts quoted by our opponents, does not necessarily refer to parish priests, since, in the first ages, bishops were also called *presbyteri*.[7]

§ 2. *Correct View of the Nature of the Office of Parish Priests—Irremovability—Status of Pastors in the United States.*

640. We shall here show, 1, what are the chief errors on this head; 2, what is essentially required to constitute a parish priest in the canonical sense of the term. *Chief Erroneous Systems respecting the Rights of Parish Priests.*—I. *Presbyterianism proper*, so called because it makes priests presbyters) the equals of bishops, and asserts that bishops have, *jure divino*, no powers that are not equally possessed by priests. This heretical system, broached by Aërius in the fourth century, was renewed by Wiclef, Huss, Luther, Calvin, etc. II. Again, there are those who do not—at least openly—deny that bishops are, *jure divino*, superior to priests, but who attribute to parish priests many undue parochial rights. They are styled *parochistae*, and their system *parochismus*.[8] Now, the principal errors of the *parochistae* are: 1. Those of Richer, whose tenets may be summed up thus:[9] The Holy See can exercise no act of jurisdiction in the dioceses of bishops without the consent

[4] Ferraris, V. Parochia., n. 7.

[5] That is, in villages whose inhabitants could not conveniently go to the church in the episcopal city. [6] Supra, n. 243. [7] Craiss., n. 1295.

[8] Not improperly also *Presbyterianismus* (Bouix, l. c., p. 80).

[9] Salz., t. ii., p. 188.

of the bishops themselves; bishops, in turn, cannot interfere in the management of parishes, except by consent of the parish priests. That these assertions are utterly false is provable from their logical consequences. For if it were true that bishops and Popes have but *jurisdictio mediata*, not *immediata*, over the faithful, it would follow that, except in case of necessity, no bishop—nay, not even the Pope himself—could anywhere, either personally or through others, perform any sacred function, such as preaching, hearing confessions, without the consent of parish priests—which is manifestly erroneous and absurd.[10] 2. Those of Gerson and others, who maintain that parish priests have, by virtue of their office, power to excommunicate, and, in general, jurisdiction *in foro externo;* that they are *judices fidei*, and have a definitive vote in councils. We shall not attempt here to confute these errors in detail. Suffice it to say [11] that parish priests do not at present, and probably never did, possess any jurisdiction *in foro externo;*[12] cannot excommunicate by virtue of their office, and have no decisive voice in councils.

641. *What is meant by a Parish Priest in the canonical sense of the term.—Definition.*—A parish priest (*parochus, rector, curatus, persona, pastor*) is a person lawfully appointed to exercise, in his own name and *ex obligatione*, the *cura animarum*—that is, to preach the word of God and administer the sacraments to a determinate number of the faithful of a diocese, who in turn are, in a measure, bound to receive the sacraments from him.[13] As this definition includes all the conditions essentially requisite to constitute a parish priest, in the canonical sense of the term, we shall briefly explain

[10] Craiss., n. 1292. [11] Cfr. Bouix, l. c., pp. 120, 132, 142.

[12] Hence, they are not even *praelati minores*, nor *dignitates;* nor can they be called *pastors* (*pastores*) in the strict sense; though, at present, they are not unfrequently called *pastors*—namely, of the second order, and in a broad sense (Craiss., n. 1305). [13] Bouix, l. c., p. 175.

its terms: 1. We say, the *cura animarum;* now, this *cura* consists chiefly in the preaching of the word of God and the administration of the sacraments.[14] As the administration of the sacraments necessarily includes the power to impart sacramental absolution, it is evident that one who is appointed parish priest has, *eo ipso*, jurisdiction *in foro poenitentiali*, and may, if he is a priest, hear confessions without any further approbation. 2. We say, *in his own name* (*nomine proprio, jure proprio*); that is, by virtue of his office, and not merely as the vicar or in the name of another—*v.g.*, the bishop.[15] Hence, assistant priests, though they exercise the *cura*, are not on that account parish priests; for they exercise the *cura* merely *for*, or *in the stead of*, others—namely, pastors. Parish priests, therefore, are vested with *jurisdictio ordinaria*, not merely *delegata;* once appointed, they, like vicars-general, have, in a measure, jurisdiction *a lege ecclesiastica.* 3. We say, *and ex obligatione;* that is, the parish priest is *obliged* to administer the sacraments to the faithful under his charge.[16] 4. We say, *to a determinate number*, etc.; hence, parishes must in all cases have accurately-defined limits. Therefore, where there are distinct parishes and parish priests proper (*parochi in titulum—i.e., in beneficium perpetuum*), the bishop,[17] though having pre-eminently the *cura animarum* throughout the diocese, is not, strictly speaking, the parish priest of the whole diocese.[18] In places, however, where there are no separate parishes and no parish priests, in the canonical sense of the term—as was formerly the case nearly all over Spain, and is at present the case in the United States—the whole diocese is considered but one parish, of which the bishop is the rector or universal parish

[14] Bouix, l. c., p. 171; cfr. Ferraris, l. c., n. 18.

[15] Leuren., For. Ben., p. i., qu. 146.

[16] Ib., qu. 146.

[17] He is, however, the parish priest proper of his cathedral (ib., qu. 143).

[18] Even in this case *episcopus jus habet, ut se ingerere possit in cura cujuslibet parochiae, et in ea pro libitu se occupare* (Ib.)

priest.[19] 5. We say, *who in turn are, in a measure, bound*, etc.; hence, a pastor whose parishioners are *altogether free* to receive the sacraments outside of their own parish is not, canonically speaking, a parish priest.[20] *Note.*—The word *parochia, paroecia*, means, 1, the sacred edifice or the parish church where the parishioners attend Mass, etc. (*ecclesia parochialis*); 2, the body of parishioners or the congregation—that is, the faithful living in a certain district and placed under a parish priest; 3, the district itself where they live.[21] Parishes, as a rule, are distinguished from each other, and the number of people belonging to each parish is usually determined, by *territorial* circumscription or boundaries.[22] We say, *as a rule;* for it is not repugnant to canon law that a parish, in the canonical sense of the word, should consist of certain families, even though living in the districts of other parishes.[23] In the United States German congregations are usually established in this manner—that is, they are made up of the German Catholics of a place, no matter whether they live in the confines of English-speaking congregations.

642.—I. *How many kinds of "cura animarum" are there?* These: 1. The *cura plena* and *partialis*. The *cura plena* is that which includes jurisdiction *in foro externo* and the *potestas judicialis;* the Sovereign Pontiff exercises it all over the world; bishops in their respective dioceses. The *cura partialis* is that which is restricted to matters pertaining to the *forum internum.*[24] 2. The *cura habitualis* and *actualis*. A person is said to have the *cura habitualis* when he neither does nor can, *de facto*, exercise it, though he can and should see that it is exercised by another person. On the other hand, a person who, *de facto*, has the right to exercise the *cura* is said to have the *cura actualis*. Thus, a cathedral

[19] Bouix, l. c., p. 173. [20] Leuren., l. c., qu. 146. [21] Ib., qu. 144.
[22] Ib., qu. 160; Bouix, l. c., p. 269. [23] Ferraris, l. c., n. 17.
[24] Bouix, l. c., p. 178.

chapter to which the *cura* is attached has the *cura habitualis* only—is *parochus habitu*—while the vicar appointed by it to exercise the *cura* has the *cura actualis*, and is, properly speaking, the *parochus*. II. *What "cura" is essential to the office of parish priest?* The *cura partialis*. We observe, when we speak simply of the *cura animarum*, we mean the *cura* as exercised by parish priests—*i.e.*, the *cura partialis*. 2. The *cura habitualis* is not sufficient. A *parochus habitu*, therefore, is not, strictly speaking, a parish priest. The *cura actualis*, however, is sufficient, even without the *cura habitualis*. Thus, the parochial vicar (*vicarius capituli curatus*) appointed by a chapter having the *cura habitualis* is a true parish priest. In the United States no *cura habitualis* is vested in any person or ecclesiastical corporation. III. *Can there be several parish priests in one and the same parish?* 1. The question is controverted. The negative[25] holds that a parish priest is essentially one who exercises the *cura solely* and *exclusively*[26] in his parish, so that if two or more were placed in charge of the same parish none of them would be parish priest. 2. It is admitted by all that, as a rule, it is more expedient that but one parish priest should be placed over a parish. 3. Congregations in the United States should be governed each by one priest only as pastor, not by several *ex aequo*.[27]

643. *Q.* Is irremovability essential in order that one may be a true parish priest?

A.—I. The question is controverted. The *negative* is thus advocated by Bouix:[28] Irremovability is necessary, either by reason of the office itself of parish priest (*ratione officii*) or by reason of benefice (*ratione beneficii*). Now, neither can be said. 1. Not the first; for a priest, though appointed so as to be removable *ad nutum*, may nevertheless be appointed

[25] It is the *sententia multo communior* (Bouix, l. c., p. 182).

[26] We prescind, of course, from the bishop's rights.

[27] Conc. Pl. Balt. II., n. 111.

[28] L. c., p. 193.

to exercise the *cura, ex obligatione* and *nomine proprio*, etc., and may, therefore, be a true parish priest. Hence, the *S. Congr. Conc.* always held that pastors removable *ad nutum* were bound by the same obligations as parish priests proper, provided they exercised the *cura actualis* in their own name, and not merely as the vicars or assistants of others having the *cura actualis*. Irremovability therefore, or life tenure, does not seem essential *ratione officii*. 2. Nor can the second be said—namely, that irremovability (*perpetuitas*)[29] is requisite *ratione beneficii*. For one may be constituted a true parish priest without receiving any benefice whatever. A church may become a parish church, and a parish priest may be appointed to it, even though no benefice has been founded for this object. All that is necessary in the erection of a parish church is that some reliable provision should be made for the support of the parish priest. But this can be done in various ways; for instance, by annual contributions of the parishioners, by pew-rents, collections, and the like, as is the case in the United States. II. The *affirmative* is maintained by eminent canonists. Thus, according to Cardinal Soglia,[30] parish priests are "presbyteri, quibus . . . *assidua et perpetua* animarum cura tradita est"; and, according to Ferraris,[31] they are *rectores stabiles, perpetui*.

644. *Q.* Is the removability of parish priests contrary to canon law?[32] Or does the exercise of the *cura animarum* by priests *amovibiles ad nutum* conflict with the sacred canons or the *jus commune?*

A.—I. Here, again, there are two opinions. The *nega-*

[29] An *officium* is named *perpetuum, inamovibile, irrevocabile* when it cannot be taken away from a person except by judicial process and for causes determined in law; an *officium* is called *manuale, amovibile, revocabile ad nutum* when it can be taken away without trial (Craiss., n. 1314).

[30] T. ii., p. 44. [31] L. c., n. 3, 14.

[32] We say, *canon law;* for the preceding question was equivalent to this: Are parish priests irremovable *by the very nature of their office?*

tive is maintained by Bouix.[33] His principal arguments are: Parish priests are removable in two ways: (*a*) *ad nutum ordinariorum;* (*b*) *ad nutum parochorum principalium.* 1. Now, the removability of parish priests, or rather *vicarii curati*, by the *parochus principalis—i.e.*, by the chapter, monastery, etc. —is, in a measure, condemned by the sacred canons. Formerly there were many parishes that were attached to chapters, monasteries, etc. The *cura* of these parishes was usually exercised by a *vicarius;* this vicar or substitute was not only appointed by the *parochus principalis—i.e.*, by the chapter, etc.—but was also removed or changed by the same at pleasure. The revenues of the parish were kept by the *parochus principalis*, and but a small salary was allowed the vicar. Not unfrequently the *parochus principalis* employed those priests as vicars who would serve at the lowest rate, without having the slightest regard for their capacity or virtue. To remedy these evils both councils and Popes enjoined: 1, that these vicars should receive a determinate and suitable salary; 2, that, when once appointed, they could not, as a rule, be removed *ad nutum parochi principalis*, but should hold office for life.[34] 2. The removability, on the other hand, of parish priests, *ad nutum episcopi*, is not, according to Bouix, contrary to canon law. In fact, the Council of Trent enjoins on bishops to assign to each parish its own *perpetual* parish priest, *or* to make such other provision as may be more beneficial. Here, as Pignatelli observes, the Council does not restrict bishops to the appointment of irremovable pastors, but allows them to provide otherwise—*i.e.*, to appoint pastors *amovibiles ad nutum episcopi.* II. The *affirmative*—namely, that the removability of parish priests, even *ad nutum episcopi*, is contrary to the *jus commune*—is advocated by Leurenius,[35] Ferraris, Soglia, and others. Whatever may be said on this head, it seems cer-

[33] L. c., p. 201.

[34] Cfr. tamen Bouix, l. c., p. 207.

[35] For. Benef., l. c., qu. 177.

tain that, according to the present discipline of the Church, parish priests are, as a rule, irremovable.[36] In England the rectors of the principal churches are *inamovibiles*.[37]

645. Is it desirable that pastors in the United States should become canonically-constituted parish priests? We premise: There are no canonically-established parishes[38] in this country; the whole diocese is, so to say, one parish, of which the bishop is the sole and universal *parochus*.[39] Our pastors exercise the *cura animarum* not in their own name, but in the name of the bishop (*nomine episcopi*). Hence, they are not parish priests, in the canonical sense of the term, but merely the vicars of the bishop, and have but *jurisdictio delegata*. We now answer, in the words of the Second Plenary Council of Baltimore:[40] "Optandum omnino esset ut juxta Ecclesiae universae consuetudinem parochi proprie dicti, quemadmodum in Catholicis regionibus existunt, in nostrarum quoque provinciarum ecclesiis constituerentur. Verum ea sunt nostra rerum tempora, quae id fieri nondum patiantur. Patrum tamen hujus Concilii Pl. mens est ut paulatim . . . disciplina nostra, hac in re, Ecclesiae universae disciplinae conformetur."

§ 3. *On the Canonical Formation and Suppression of Parishes.*

646. We sufficiently described the formation of parishes when we spoke of the erection of benefices or parishes.[41] We shall here subjoin only a few words, 1, on the formation of parishes *cum jure patronatus*; 2, on the alteration and suppression of parishes in general. I. *Formation of Parishes "cum jure patronatus."*—The *jus patronatus* consists chiefly in

[36] Phillips, Lehrb., § 168.

[37] Conc. Westmonast. I., A.D. 1852; ap. Coll. Lac., t. iii., p. 925.

[38] The canonical parish which formerly existed in New Orleans became extinct about thirty years ago (Konings, n. 1608). As to California, see infra, n.

[39] Supra, n. 256, 260; cfr. Konings, n. 1138. [40] N. 123.

[41] Supra, n. 251–271.

this: that when a benefice or parish becomes vacant, the *patronus* can present the new rector to the bishop for appointment.[42] The rector thus presented acquires a *jus ad rem*, and must be appointed to the vacant place, unless some canonical obstacle stands in the way.[43] *How is the "jus patronatus" acquired?* 1. *Extraordinarily* (*de jure singulari*) by prescription, custom, and privilege. 2. *Ordinarily* (*de jure communi*) a person acquires the *jus patronatus* in three ways: 1, by giving the land upon which the church is to be built (*fundatione, concessione fundi*); 2, by defraying the expenses of the building of the church (*aedificatione, constructione*); 3, by endowing the church (*dotatione*). It is sufficient for a person to perform *one* of these three things, and it is not necessary for him to perform *all three*.[44] Thus, a person acquires the *jus patronatus*, 1, by donating the ground (though only after the church has been built upon it and endowed);[45] 2, *or* by building a church at his own expense; 3, *or* by endowing it.[46] The endowment must be sufficient—*i.e.*, sufficient revenues must be assigned the church for the support of the clergymen, for the maintenance of divine worship, for candles, and the like. No *jus patronatus* arises from an insufficient endowment. Moreover, simple donations, legacies, or contributions do not confer the *jus patronatus*, even though they constitute a *dos sufficiens*.[47] A person, therefore, not assigning an endowment proper, but merely contributing, even though generously, to a church, does not become an endower (*dotator*), but merely a benefactor (*benefactor*). Hence, as Kenrick[48] says, no *jus patronatus* exists in the United

[42] Craiss., n. 1322. A *postulatum*, made by a number of German bishops at the *Vatican Council*, proposed to restrict the right of presentation, so that lay patrons should be obliged to present one of three persons to be designated by the ordinary (Martin, l. c., p. 172).

[43] Supra, n. 320.

[44] Leuren., l. c, p. ii., qu. 30.

[45] Ib., qu. 39.

[46] Ferraris, V. Jus Patronatus, art. i., n. 20, 26.

[47] Leuren., l. c., qu. 42.

[48] Tr. 12, n. 96; cfr. Conc. Pl. Balt. II., n. 184.

States, because our churches are maintained simply by contributions from the faithful. From what has been said, it follows that the same church may have several *patroni—v.g.*, if one gives the land, another builds the church, and a third endows it; in this case all three are *patroni in solidum—i.e.*, have equal rights, each having a vote in the nomination of the pastor.[49] Again, if a number of persons concur in performing one of the three above actions—*i.e.*, if they together *either* buy the land, etc.—all of them become *patroni*.[50] The consent of the ordinary is indispensable for the acquisition of the *jus patronatus;* it need not, however, be necessarily given *before* or *during* the building of the church. Thus, if a church were built without the consent of the bishop, but afterwards accepted by him, this acceptance would be sufficient consent.[51] We need not here say that the *jus patronatus* does not mean the right to actually *appoint* the pastor, but merely to *present* him for appointment. Finally, we observe, the Church has instituted the *jus patronatus* in order to encourage the faithful to build and generously endow churches. II. *Alteration and Suppression of Parishes in general.*—The bishop may, by virtue of his *potestas ordinaria*,[52] change a church not having the care of souls annexed (*ecclesia simplex*) into one with the care of souls (*ecclesia curata*), but not vice versa. Leurenius[53] also seems to hold that the bishop may, by virtue of his *potestas ordinaria*, change a church whose rector is *amovibilis ad nutum* into one whose pastor is *inamovibilis;* this, however, is denied by others.[54] The bishop may suppress parishes in all cases where he can unite them *accessorie* to other churches.

[49] Leuren., l. c., qu. 31.
[50] Ferraris, l. c., n. 27.
[51] Leuren., l. c., qu. 36, n. 1, 2.
[52] Bouix, De Paroch., p. 297.
[53] L. c., p. iii., qu. 964, n. 5; Craiss., n. 1323.
[54] Supra, n. 258–261.

§ 4. *Canonical Mode of Appointing and Removing Parish Priests—Mode of Appointing, etc., Pastors, in the United States, Ireland, and England.*

647.—*Mode of Appointment of Parish Priests proper.*—We have already shown, 1, what persons have the right to make appointments to parishes, both in Catholic countries where canon law obtains[55] and in the United States;[56] 2, what qualifications are required in persons to be appointed parish priests.[57] We now ask: *How* should parish priests be appointed? According to the present discipline of the Church, as established by the Council of Trent,[58] a *special concursus* or competitive examination is to be held each time a parish falls vacant; the applicants for the vacant parish are to be examined by the bishop or his vicar-general, and three examiners appointed in synod (*examinatores synodales, pro-synodales*); the parish must be conferred upon the *persona dignior*, or the most fit person.[59] Appointments made without the prescribed *concursus* are null and void. There are, however, several cases where parish priests can be appointed without any *concursus*. Thus, no *concursus* is required, 1, in the appointment of parish priests *ad nutum amovibiles;* for the Council of Trent speaks merely of those *beneficia curata* which are *perpetua—i.e.*, those parishes which have irremovable pastors; 2, nor in appointments to parishes

[55] Supra, n. 357–362. [56] Ib., n. 362, 363. [57] Ib., n. 367 seq.

[58] Sess. xxiv., cap. xviii., d. R. Petitions for a modification of this Tridentine decree were addressed to the Council of the *Vatican* by bishops from Germany, France, and Belgium. The proposal of the German bishops says: "Decretum S. C. Trid. de *concursu pro parochiis speciali* instituendo in multis amplioribus dioecesibus nunquam in usum pervenit, in multis aliis autem jam approbante S. Sede Ap. ejusdem loco hodie *concursus generalis* habetur. Propterea petimus ut illud S. C. Trid. decretum revisioni submittatur, et ea examinis sive concursus norma praescribatur, quae ubique valeat ac debeat observari" (Martin, Doc., p. 172; cfr. ib., pp. 144, 174).

[59] Bouix, l. c., pp. 333, 336.

which possess so slight revenues as not to allow of the trouble of such examination; 3, nor in case grievous quarrels and tumults might result from the *concursus;* 4, nor (except in Rome[60]) in the appointment of vicars (*vicarii curati*) of parishes united (*parochiae unitae*) to monasteries, chapters, and the like—namely, where the *cura habitualis* is vested in the *parochus principalis* (*i.e.*, the chapter, etc.), and the *cura actualis* in the *vicarius*. For other cases see Bouix.[61] I. *How are pastors to be appointed in the United States?* The fathers of the Second Plenary Council of Baltimore[62] thus answer: 1. "Neminem parochiali ecclesiae praeponendum censemus, quin examen coram episcopo et duobus presbyteris ab episcopo designandis, antea subierit. 2. Neque ullus ad hoc examen admittatur, qui in dioecesi, ubi parochia sita est, sacris missionibus per quinquennium saltem operam non dederit. 3. Quod, si sacerdos ad parochialis ecclesiae curam assumatur, qui nondum quinque annos in sacris missionibus insumserit, tanquam paroeciae administrator habeatur; neque nisi expleto quinquennio, factoque, ut supra, examine, parochi nomen et jura obtineat. 4. Quod quidem regulares, qui quinque annos in his provinciis vixerint, non attingat." II. *How are parish priests appointed in Ireland?* The Plenary Synod of Thurles[63] says: "Cum per circumstantias hujus regionis, concursus quamvis optandus, vix introduci possit, episcoporum hac in re diligentia et zelus est exercendus, ut omni cura ac prudentia, in tam gravi negotio procedant, eosque seligant ad paroecias regendas quos digniores esse post diligens examen invenerint." In Ireland, therefore, as in England, France, and the United States, pastors are appointed without any *concursus*.

648.—*Dismissal of Pastors, whether Removable or Irremovable.*—We have elsewhere[64] sufficiently explained *how*

[60] Craiss., n. 1330. [61] L. c., p. 347. [62] N. 126.
[63] Ap. Coll. Lac., l. c., p. 787. [64] Supra, n. 401–420.

and *why*[65] both irremovable and removable parish priests are dismissed from their parishes or changed from one place to another.[66] We here but add: Pastors in the United States cannot be removed without cause, if by the removal they would suffer a *notabile damnum*, apart from the loss of the parish.[67] I. *How are pastors in the U. S. dismissed from their parishes ratione criminis?* We premise: The withdrawal of faculties (*revocatio facultatum*) with us is equivalent to dismissal from the parish (*privatio parochiae*).[68] We now answer: Pastors with us should not be dismissed save on regular trial, to be conducted by the bishop and two priests selected by him.[69] Now, are bishops in the United States not merely *exhorted*, but *obliged*, to observe this method in dismissing pastors? The Second Plenary Council of Baltimore[70] thus answers: "Quamque [*i.e.*, *normam*—namely, mode of procedure or trial by bishop and two priests] legis esse communis statuunt hujus Pl. C. Patres." The Council, therefore, *enacts* that henceforth this shall be the *common law* all over the United States, viz.: No priest accused of an offence shall be punished save on a regular trial, to be conducted by the bishop and two priests selected by him. Observe, the two priests (*judices causarum*) associated to the bishop in trying causes may be selected either from among the bishop's council or the other priests of the diocese;[71] they should, moreover, be appointed at stated times—*i.e.*, in the beginning of every year, not merely when a cause is to be tried.[72] II. *How are parish priests removed in England?*

[65] A number of bishops from Germany proposed at the *Vatican Council* that *simplex fornicatio notoria, concubinatus manifestus, ebrietas necnon prodigalitas incorrigibilis atque scandalosa* should also constitute legitimate causes for dismissal from canonical parishes (Martin, l. c., p. 173).

[66] Supra, n. 392–396.

[67] Cfr. Bouix, l. c., p. 410; cfr. Leur., l. c., p. i., qu. 72, 74, 75.

[68] Konings, n. 1693.

[69] Conc. Pl. Balt. II., n. 77.

[70] Ib.

[71] Ib.; cfr. Konings, l. c.

[72] Cfr. Conc. Trid., sess. xxv., c. vi., d. R.

We premise: 1. There are two kinds of pastors in England; some are *amovibiles ad nutum*, others are appointed for life (*parochi permanenter instituti*, *rectores missionarii*). 2. Each bishop should select in his diocesan synod five priests, who are to form an investigating committee. We now answer: 1. "Rector missionarius permanenter institutus definitive dejici non poterit, nisi tribus saltem ex commissione investigationis [investigating committee] ad examen adhibitis, atque eorum consilio accepto."[73] 2. No special mode seems prescribed for the removal of priests *revocabiles ad nutum*.

Art. II.

Of the "Rights" of Parish Priests proper, and of Pastors, in the United States.

§ 1. *General Remarks.*

649. We observe that what we shall here say in regard to the *jura parochialia* applies chiefly to parish priests, in the canonical sense of the term, whether they are removable or irremovable,[74] but not—at least, strictly speaking—to pastors in the United States; for the latter are simply missionary priests, but not *parochi*. We say, *strictly speaking;* for our pastors, especially in the larger cities, possess quasi-parochial rights so far as concerns other pastors. We say, *so far*, etc.; for the faithful may validly, and also *per se* licitly, receive the sacraments (except matrimony, where the decree *Tametsi* obtains) from the pastors of other congregations; but the pastors themselves are forbidden to administer certain sacraments to members of other parishes or dioceses.[75] Hence, what we are about to say concerning the rights of parish priests proper is, *in a measure*, also applicable to our pastors.

[73] Conc. Prov. Westmon. I., ap. Coll. Lac., t. iii., pp. 925, 959, 960.
[74] Craiss., n. 1343. [75] Conc. Pl. Balt. II., n. 117, 229; cfr. Konings, n. 1138.

The rights of parish priests relate chiefly to the administration of the sacraments of baptism, penance, the Blessed Eucharist, matrimony, and Extreme Unction; to funerals, parochial functions, etc.

§ 2. *Rights of Parish Priests relative to the Sacraments.*

650. We premise: Every parish, as was shown, must have certain fixed limits. By parishioners are meant, as a rule, the faithful who live within the boundaries of the parish.[76] Now, of these, 1, some have a *domicilium proprie dictum*—those, namely, who have come into the parish with the intention (manifested) of living there permanently, if nothing should call them away; 2, others have but a *quasi-domicilium*—*i.e.*, dwell in the parish for a considerable part of the year,[77] or at least with the intention of remaining so long—*v.g.*, students in colleges, servant-girls;[78] 3, a third class, finally, live in the parish but temporarily; they are named strangers (*peregrini*); if they travel from place to place, having nowhere a domicile or quasi-domicile, they are called wanderers (*vagi*). We shall now pass to the several sacraments. I. *Rights of Parish Priests relative to Baptisms.*—Parishioners—that is, not only the faithful who have a domicile, but also those who have but a quasi-domicile, in the parish—are bound, as a rule, to bring their children to their parish church for baptism;[79] and they sin mortally by having their children baptized in another parish without the permission of their parish priest. Persons who have nowhere a domicile or quasi-domicile can have their children baptized wherever they wish. A priest who, except in case of necessity, should presume to baptize children belonging to another parish, without the

[76] Phillips, l. c., p. 343. [77] Bouix, De Judic. Eccl., vol. i., pp. 267, 275.

[78] Hence, a person may have a domicile proper in one place, and at the same time a quasi-domicile in another—*v.g.*, persons living in the city during winter and in the country during summer. [79] Bouix, De Paroch., p. 443.

permission—at least, presumptive—of the respective pastor, would commit a mortal sin. This prohibition is applied to the United States in the following modified manner: "Gravissima reprehensione digni sunt sacerdotes, qui infantes ab aliena sive paroecia sive dioecesi, sibi oblatos temere baptizant, cum facile a proprio pastore baptizari possunt. Abusum hunc iterum damnamus ac prohibemus."[80]

651.—II. *Rights of Parish Priests respecting the Sacrament of Penance.*—A parish priest, by virtue of his office, has *jurisdictio ordinaria in foro interno* in his parish. We say, *in his parish;* for a parish priest, as such, cannot hear (except his parishioners) in the whole diocese, but only in the confines of his own parish. In order to avoid difficulties, therefore, it were advisable, according to Bouix,[81] that each bishop should expressly give all his parish priests faculties to hear in the whole diocese. In many places parish priests are understood by custom to have jurisdiction in every part of the diocese. Formerly parish priests possessed *exclusively* the right to hear their parishioners. This prerogative has lapsed. At present the faithful may, without the permission of their parish priest, confess, even in paschal time or when in danger of death, to any priest, secular or regular, who is approved by the bishop.[82] Has the parish priest a right to demand from his parishioners presenting themselves for holy communion in paschal time a certificate as to their having made their confession to an approved priest? We answer: 1. Wherever this is not prescribed by the ordinary a parish priest cannot exact such certificate, except from those parishioners whom he may, for grave reasons, suspect of not having gone to confession, even though they assert the contrary. In giving this certificate the confessor should merely state the fact of the confession having been made, but not

[80] Conc. Pl. Balt. II., n. 227; our Notes, n. 202–205. [81] L. c., p. 445.
[82] Phillips, l. c., p. 346.

whether absolution was given.[83] 2. The above, as is evident, applies to countries only where there are canonical parish priests, and where, consequently, the faithful are bound to receive their paschal communion in their parish church, but not to the United States, where the faithful can make their Easter communion *everywhere.*

652. *Confessors in the United States.*—1. As our pastors are not canonical parish priests, they have but *jurisdictio delegata in foro interno*, and, consequently, cannot hear their parishioners outside the diocese.[84] 2. Formerly, according to an agreement among our bishops in 1810, a priest approved for one diocese could hear confessions all over the United States.[85] This agreement no longer exists. Hence, at present, no priest can hear out of the diocese for which he is approved.[86] 3. All our priests—*i.e.*, assistants no less than pastors—are, as a rule, approved for the whole diocese.

653.—III. *Rights of Parish Priests in regard to the Administration of the Blessed Eucharist.*—1. Where there are canonically-established parishes the faithful are bound to receive the paschal communion *in their parish church;*[87] if they communicate elsewhere without the permission of their parish priest, they do not fulfil the precept of the Church. From the obligation of receiving the paschal communion in the parish church are exempted chiefly: 1. Strangers (*peregrini, advenae*) who cannot conveniently go to the place of their domicile. 2. Wanderers or tramps (*vagi*).[88] These two classes are not even bound to receive their paschal communion in the parish where they are, but can satisfy the precept by communicating in the churches of religious.[89] 3. Seculars employed as servants in monasteries and religious houses, provided they be in actual service, residing in

[83] Bouix, l. c., p. 447.
[84] Kenr., tr. xviii., n. 133.
[85] Conc. Pl. Balt. II., n. 118.
[86] Konings, n. 1394.
[87] Supra, n. 430.
[88] Craiss., n. 1358.
[89] O'Kane, n. 759.

the houses of the religious, and living under obedience to the regular prelate. We say, *living under obedience*, etc.; by this we do not mean the obedience due by religious profession,[90] but simply the obedience due *ratione famulatus—i.e.*, the obedience which servants, as such, owe to their masters.[91] Whether seculars who reside permanently in religious houses, as in places of retreat, can fulfil the paschal precept in those houses without the permission of the parish priest is questioned by some. As to students in colleges conducted by religious, see n. 431. At present the faithful, with the exception of their Easter communion, can receive the Blessed Sacrament in any church or public chapel. Hence, regulars can distribute holy communion in their churches to seculars during the whole year, even during paschal time, except Easter Sunday alone—nay, in the United States, even on Easter Sunday. For, with us, the faithful can make their paschal communion almost everywhere.

654. *Observation.*—We just said, *almost everywhere;* that is, except in certain parishes of California. For, in this State, there are some canonical parishes, though the pastors in charge of them are not canonical parish priests. The faithful and rectors of these parishes are mutually bound by all the duties of parishioners and parish priests proper, as laid down by the *jus commune*. Hence, the former must receive their paschal communion in their parish church. This is evident from these words of the fathers of the First Provincial Council of San Francisco: *Declaramus rectores earum parocciarum, quae habentur uti parocciae proprie dictae, teneri ad omnia munia parochorum erga fideles intra limites suarum ecclesiarum constitutos adimplenda; fideles autem jus habere ad subsidia spiritualia ab illis ceu a propriis animarum rectoribus recipiendum, ac specialiter teneri ad ipsos recurrere pro communione paschali, baptismo, viatico, extrema unctione, et matrimo-*

[90] Supra, n. 431.

[91] Bouix, De Jure Reg., vol. ii., p. 201.

nio. From these words it would seem to follow that the above pastors are obliged to offer up Mass for their people on Sundays and holidays, and that they can validly and lawfully hear their confessions everywhere.[92]

655.—II. *Sacrifice of the Mass.*—According to the present discipline of the Church, the faithful are not bound, though they should be strenuously exhorted, to hear Mass on Sundays and holidays of obligation *in their parish church.*[93] Parishioners, therefore, can satisfy the precept of the Church by hearing Mass in *any* church, public chapel, or even in the private chapels of regulars, but not in the private or domestic chapels of seculars.[94] In the United States the faithful fulfil the precept by assisting at the Holy Sacrifice *anywhere.*[95]

656. *Q.* Can a parish priest celebrate two Masses on the same day (*binatio, binare*)?

A.—I. *Universal Discipline of the Church or Provisions of the Jus Commune on this head.*—Formerly priests were allowed to celebrate several times a day. But, at present, this is prohibited, except (*a*) on Christmas (*b*) and in the case of necessity. Now, what can be regarded as cases of necessity? We answer by the following propositions: *Prop. I. Many cases which were formerly considered by canonists as cases of necessity cannot be considered as such at the present day.*—Thus, canonists formerly held that a priest could say a second Mass on the same day—*v.g.*, for the accommodation of strangers, princes, or bishops arriving too late for the first Mass. This opinion is no longer tenable.[96] *Prop. II. Prescinding from extraordinary occurrences, there is at the present day only one practical case of necessity authorizing the "binatio"—namely, (a) when either an entire congregation, or (b) a large portion of a congregation, is debarred from hearing*

[92] Konings, vol. i., p. 471, edit. 2*a*.
[93] Supra, n. 430.
[94] Bouix, l. c., p. 196.
[95] Kenr., tr. iv., p. ii., n. 14.
[96] Bouix, De Par., p. 451.

Mass on Sundays and holidays unless the pastor says two Masses on the same day.—We say, 1, *an entire congregation;* hence, a pastor who has two parishes at so great a distance from each other that the people in one of the places cannot conveniently go to the other place for Mass can say two Masses a day, one in each parish.[97] We say, 2, *or a large portion*, etc.; hence, a pastor can say two Masses a day in the *same church*, if, *v.g.*, three hundred parishioners are otherwise deprived of Mass—*v.g.*, because the church is too small to hold the entire congregation at the same time. We say, 3, *on Sundays and holidays;* that is, the necessity for saying two Masses can occur on those days only on which the faithful are bound to hear Mass, but not on week-days, nor on Holy Thursday or Good Friday. Observe that, as a rule, the permission of the bishop is required for the *binatio* even in the above circumstances. But is the bishop's permission sufficient, or is that of the Holy See necessary, at least when the two Masses are to be said in the *same church?* Bouix[98] holds against the *Analecta J. P.* that no Papal permission is requisite. For the *binatio*, in the case of necessity, is permitted by the *jus commune* itself.[99]

657.—II. *Particular Discipline* (*jus speciale, particulare*), *in this matter, of the Church in the United States and Countries similarly circumstanced.*—So far we have shown in what cases canonical pastors can celebrate twice a day by virtue of the *jus commune*, and therefore without a Papal indult. Now, can pastors or priests in the United States celebrate twice a day under conditions less stringent than those prescribed by the *jus commune?* They can; for bishops in the United States,[100] Ireland,[101] England,[102] and, in fact, almost

[97] Bouix, De Par., p. 453. [98] L. c., p. 456.

[99] Namely, by the decretal *Consuluisti* (issued by Pope Innocent III. in 1212), which still has the force of common law, as it was never revoked by any subsequent pontifical decree.

[100] Fac., form. i., n. 23. [101] Syn. Pl. Thurles., ap. Coll. Lac., iii., p. 781.

[102] Conc. Prov. Westmon. I., A.D. 1852; ap. Coll. Lac., iii., p. 933.

everywhere, have special faculties from Rome to allow of *binatio*. Now, it is evident that, by these faculties, the above bishops have fuller powers on this head than they have by the *jus commune;* otherwise, such faculties were useless, since they would confer upon bishops no powers not already vested in them by the *jus commune*.[103] Hence, the above bishops can allow *binatio* in cases where it is not permitted by the common law. Thus, priests in the United States and the above countries, by episcopal permission, can say two Masses a day—*v.g.*, not only when a *great* (*v.g.*, three hundred persons), but when a *considerable*, number of persons (*v.g.*, thirty) would otherwise be deprived of Mass on Sundays and holidays—*v.g.*, because they live too far from church, or because some must stay at home while the others go to Mass. *Observation.*—A parish priest proper—*i.e.*, one who is *bound* to offer up Mass for his people on Sundays and holidays—cannot receive a stipend for any of the Masses when he celebrates twice a day.[104] We say, 1, *parish priest;* because other priests, not in charge of souls (*v.g.*, assistants), can undoubtedly accept of a stipend for one Mass on Sundays as well as on week-days. We say, 2, parish priest *proper;* hence, pastors in the United States,[105] not being canonical parish priests, are exempt from the obligation of celebrating for their congregations, and therefore can accept of a stipend for *one* Mass on Sundays and holidays; nay, at present, according to Konings (n. 1327, q. 7, ed. 3ia), by Papal indult, *all bishops* of missionary countries can, for grave and just cause, allow priests, when they say two Masses a day, to receive a stipend for each Mass.

658.—IV. *Rights of Parish Priests in regard to the Sacrament of Matrimony—Rights of Parish Priests proper in places*

[103] Cfr. Instr. S. C. Prop., May 24, 1870, n. 11 seq.; ap. Konings, p. lvi.

[104] Bouix, l. c., p. 459. He can, however, accept of an honorary *in compensationem laboris* of the second Mass (Bouix, l. c.)

[105] As to California, see supra, n. 654.

where the Tridentine Decree "Tametsi" is in force.—Wherever the decree *Tametsi*[106] is published marriages, in order to be valid, must be contracted in presence of the *parochus proprius* of the contracting parties.[107] Now, by the *parochus proprius* is meant: 1. *The parochus domicilii—i.e.*, the one in whose parish the parties have their domicile, but not the *parochus originis*, or the one in whose parish they were born. Hence, if the parties belong to two different parishes, they may be married by the parish priest of either parish. The same holds true if one of the parties has two places of domicile. It is more becoming that the marriage be solemnized by the pastor of the place to which the bride belongs. 2. *The parochus quasi-domicilii;* hence, public or government officials, professors, and students, who have a quasi-domicile in a certain place, may validly contract before the pastor of such place. The same holds of soldiers, servants, boys and girls in asylums.[108] Youths in colleges and girls educated in convents may contract before the pastor in whose parish the college or convent is situate, though the proper course is to send them home, so that they may marry where their parents reside.[109] *Vagi—i.e.*, those who have nowhere a fixed domicile—can contract in presence of the parish priest of the place where they are for the time being; this holds even though but one of the parties is a *vagus*.[110] 3. *The bishop, vicar-general, and vicar-capitular;* these dignitaries can assist validly at marriages throughout the whole diocese. The chief rights of the *parochus proprius* are: (*a*) To publish the banns of matrimony. This law is in force also

[106] Conc. Trid., sess. xxiv., c. i., d. R. Matr.

[107] Cfr. Feije, De Imp. et Disp. Matr. Lovanii, 1874.—In the *Council of the Vatican* a proposal was made by a number of French bishops to the effect that the *impedimentum clandestinitatis* be somewhat modified, so that in future the presence of the *parochus proprius* would be required merely for the *lawfulness*, not the *validity*, of marriages, and that marriages contracted before *any priest* should be valid (Martin, Arbeiten, p. 103; Doc., p. 157).

[108] Phillips, Lehrb., p. 618. [109] Feije, l. c., n. 232. [110] Ib., n. 238.

in the United States.[111] If the parties belong to two different parishes, the proclamations must be made in both. A pastor with us, therefore, who omits the proclamations without grave reasons, is guilty of mortal sin. (*b*) To bless (*benedictio nuptialis*) and assist at the marriage. (*c*) To receive the honorary usually given by those who are married.[112]

659. *Rights and Duties of Pastors in the United States respecting Marriages.*—It is certain that the Tridentine decree *Tametsi* is not promulgated in most of the dioceses throughout this country[113] (and nowhere, with us, does it bind heretics, *sub poena nullitatis*, nor Catholics contracting with them); wherefore marriages with us contracted by the *sole consent* of the parties, without the presence of the pastor or any other priest or witnesses, are valid, though illicit. We say, *illicit;* for marriages not contracted before a priest are grievously sinful. By virtue both of custom and diocesan statutes, the right to bless marriages belongs generally to the pastor of the contracting parties. Hence, pastors are strictly forbidden to unite in marriage parties belonging to another diocese or parish. And if a pastor, in case of necessity, marries outside parties, he should remit the perquisites to the respective pastor of the parties. According to the Boston statutes,[114] this is to be done *ex titulo justitiae.*

[111] Conc. Pl. Balt. II., n. 332, 333. [112] Bouix, l. c., p. 464.

[113] Conc. Pl. Balt. II., n. 340. We said above, *in most*, etc.; for in *some parts* of the United States the decree *Tametsi* is in force. Thus, it is observed, 1, in *all* the dioceses belonging to the two provinces of New Orleans and San Francisco; 2, in the diocese of Vincennes; 3, in the following places of the diocese of St. Louis: in the city of St. Louis, and in the places called St. Genevieve, Florissant, and St. Charles; 4, in the places named Cahokia, Kaskaskia, and Prairie du Rocher, all three in the diocese of Alton. In the British possessions of North America the decree *Tametsi* is observed, 1, in the province of Quebec—namely, in the dioceses of Quebec, Montreal, Three Rivers, St. Hyacinth, St. Germain of Rimouski, and Sherbrooke, not, however, in the diocese of Ottawa; 2, in the province of St. Boniface (Konings, n. 1608).

[114] N. 46; cfr. Conc. Pl. Balt. II., n. 117.

660. *How should pastors, especially in the United States, proceed when strangers (peregrini) and wanderers (vagi) present themselves for marriage?* 1. Where the universal law of the Church on this head can be observed, a certificate *de statu libero* of the parties wishing to get married should be procured from the ordinary to whose diocese they formerly belonged. This certificate should be attested both by the above ordinary and the ordinary of the pastor before whom the parties wish to get married.[116] A pastor, therefore, to whom vagrants or strangers present themselves for marriage must refer the matter to his bishop, whose duty it is to procure the necessary certificate.[116] A neglect of these precautionary measures would not, however, annul the marriage. 2. In the United States the law prescribing the above mode of procedure is, *per se*, binding.[117] Hence, it should, wherever feasible, be carried into effect. In most cases, however, it can scarcely be observed; for, with us, no small number of strangers presenting themselves for marriage have come from nearly all parts of the globe, even the most distant, or are constantly moving from one State to another, thus making it almost impossible to procure from their former ordinary the above certificate based upon the testimony of competent witnesses.[118] Hence, there are scarcely any other means, with us, of ascertaining the *status liber* (*i.e.*, the absence of any annulling impediment, especially of the *impedimentum ligaminis*) of strangers than, 1, their own *sworn* affirmation; 2, the testimony of others who know them, or of their former pastor in another (*i.e.*, neighboring) diocese.[119] A pastor, therefore, with us, before solemnizing the marriage of such parties, should assure himself that they are *in statu libero*—*i.e.*, not actually married or under any an-

[116] Instr. S. Off. in 1670 and 1827. [116] Feije, l. c., n. 254, 255
[117] Cfr. Feije, l. c., n. 258.
[118] Kenr., tr. xxi., n. 193; cfr. Heiss, p. 181. Monach., 1861.
[119] Cfr. Feije, l. c., n. 261.

nulling impediment[120]—either by making the parties themselves take an oath to that effect, or by enquiring of parties who know them, or by writing for information to their former pastor, according as the case or circumstances admit of one or more, of this or that one, of these evidences. Where any doubt still remains, the bishop should be consulted. Kenrick[121] holds that a priest in the United States who marries parties *actually* belonging to other parishes is, *ipso jure*, suspended (*ab officio* only, not *a beneficio*[122]), and remains so until absolved by the ordinary of that pastor who ought to have been present at the marriage. According to Feije,[123] however, the *suspensio* just mentioned is incurred only in places where the decree *Tametsi* is promulgated, and therefore not—at least, *de jure commune*—in most dioceses of this country. The right to administer Extreme Unction and the Viaticum to parishioners is reserved to the parish priest in such manner that other priests cannot, except in case of necessity, licitly confer these sacraments without the pastor's or bishop's permission. Strangers may receive both these sacraments from the priests of the place where they lie ill.

§ 3. *Rights of Parish Priests relative to Funerals—Customs in the United States.*

661. The rights on this head may be reduced chiefly to two —namely, the right, 1, to bury or have a burying-ground (*jus sepeliendi*); 2, to receive certain emoluments or burial dues (*jura funeraria*). I. *Right to Perform the Burial.* — The parish priest has, *de jure commune*, the right to demand that, as a rule, his parishioners be buried in the parish cemetery.[124] We say, *as a rule;* for the following persons can be buried out of their parish cemetery: 1. Those who have selected their place of burial elsewhere Now, all persons,

[120] Cfr. Feije, l. c., n. 256, 259.
[121] L. c. [122] Ib., l. c., n. 283. [123] L. c. [124] Phillips, l. c., p. 725

excepting minors and religious,[125] are perfectly at liberty to choose their place of interment *in any Catholic cemetery*[126]—*i.e.*, not only in cemeteries attached to parochial churches, but also in such as are annexed to non-parochial churches, colleges, and other institutions. For, although parish churches alone can, *de jure ordinario*, have cemeteries, yet *any* non-parochial church, college, etc., may be authorized by the bishop to have a cemetery. Religious communities are empowered by the *jus com.* to have cemeteries. 2. Those who have a family lot (*sepulcrum gentilitium, sepulcrum majorum*) in another Catholic cemetery;[127] these not only *can*, but *should*, be buried in such lot. In the United States Catholics may sometimes be buried in their family lots, even though situate in sectarian or profane cemeteries. Thus, a deceased convert may be interred in a lot owned by his non-Catholic relatives and situate in a sectarian or profane cemetery. The same applies to those deceased persons whose relatives, though Catholic, (*a*) have, in good faith, purchased a lot in a non-Catholic cemetery, or (*b*) own one in such cemetery since the year 1853.[128]

662.—II. *Right of Receiving Emoluments.*—Funeral dues are of two kinds, according as they are given to pastors (*a*) for performing the funeral rites, or (*b*) for the grave or lot (*locus sepulturae, sepultura,*[129] *fundus*). 1. *Dues for Funeral Services.*—It is certain that nothing can be demanded from the poor, nor, as a rule, even from others, except for extraordinary funeral services, such as High Mass *de requiem.*[130] We

[125] Religious should be buried in the community graveyard.

[126] Laics, however, cannot select their place of burial in the cemeteries of nuns, except by special leave from Rome (Craiss., n. 1396).

[127] Walter, § 320; cfr. ib., note *h*.

[128] Conc. Pl. Balt. II., n. 392; cfr. our Notes, n. 355.

[129] The word *sepultura* means, 1, the right to bury—*i.e.*, to have a cemetery; 2, the funeral ceremonies; 3, the place of burial—*i.e.*, the church or cemetery where corpses are interred (Ferraris, V. Sepultura, n. 1, 2).

[130] Bouix, l. c., p. 486.

say, *as a rule;* for, where it is customary, pastors may receive—nay, even demand, from persons able to pay—the usual dues, even for performing the ordinary funeral services, as given in the Ritual—*i.e.*, without a Mass, etc.[131] In the United States pastors do not, as a rule, receive anything for reciting the ordinary funeral services of the Ritual; they are, however, liberally compensated for "extraordinary funeral services," such as solemn Masses for the dead. 2. *Dues for Place of Interment.*—According to the *jus commune*, it is forbidden, as a rule, to charge, or even receive,[132] anything for graves, except where the cemetery is not yet blessed. We say, *as a rule;* for when graves are located in a more desirable part of the cemetery, it is allowed to charge something for them, though only on account of their choice location (*ratione honorabilioris situs, seu dignioris loci*). From this it is evident that the practice in the United States of making the faithful pay for single graves,[133] no matter in what part of the cemetery they may be located, is scarcely in harmony with the universal law of the Church. The necessity of paying for cemeteries and keeping them in a proper condition would seem to somewhat justify the custom. According to Konings,[134] all difficulty will be obviated either by asking for payment of the grave only after the interment, or, what seems better (as people seldom pay *after* the interment), by setting apart in each cemetery a special place for the poor and those who do not wish to pay; thus, the remainder of the cemetery becomes at once a more eligible site for graves, which, consequently, can be lawfully sold, though not absolutely.[135] Where deceased persons in the United States are

[131] Craiss., n. 1426.

[132] Except where money is *voluntarily* given. Ferraris, l. c., n. 156.

[133] We say, *single graves;* for it would seem that, practically speaking, regular charges can be made for family lots (*sepulcra gentilitia*).

[134] N. 356, (4); cf. Kenr., tr. xii., n. 69.

[135] The faithful, by purchasing graves or family lots, obtain merely the right to be buried there, to the exclusion of other parties (Ferr., l. c., n. 147, 148).

buried either outside their parish or in a different place from that where they died, the funeral services are sometimes held in both places—*i.e.*, in the place of death and also in the place or church of interment. This is not unlawful, though it is sufficient to hold these services in the church whence the burial takes place.[136]

§ 4. *Rights of Parish Priests respecting Parochial Functions and Dispensations.*

663.—I. *Parochial Functions.*—Besides the administration of certain sacraments, there are other ecclesiastical functions performable by pastors only or with their consent. They are called *jura parochi privativa*, *functiones mere parochiales*, in contradistinction to the *jura parochi cumulativa*, *functiones mere parochiales*, or those functions which pastors, as such, have indeed the right to perform, but not to the exclusion of other persons. The churching of women, for instance, is an exclusive right of the pastor, where custom or diocesan statutes so ordain, while the celebration of solemn Mass on Holy Thursday belongs also to others.[137] II. *Power of granting Dispensations.*—It is the common opinion that, by virtue of general custom, parish priests can, for just cause dispense their parishioners individually, though not collectively, from the precept of fast.[138] They can also give them permission, though only for a time and for particular cases, to perform servile labor on holidays of obligation. As a rule, persons obliged to work publicly on holidays, even when there are undoubted reasons for so doing, should first obtain permis-

[136] Craiss., n. 1414, 1430. [137] Bouix, l. c., p. 490; Phillips, l. c., p. 345.

[138] In the *Vatican Council* a proposal was made by a number of French bishops, the import of which was that the present ecclesiastical laws respecting fasts and abstinence (the observance of which, it was alleged, was at present so different not only in different countries, but also in different provinces —nay, in the several dioceses of the same province) be made *more uniform* and *as lenient as possible* (Martin, Arb., p. 108; Doc., p. 161).

sion from the pastor or bishop.[139] *Observations.*—1. *Our bishops* may—in fact, usually do—by virtue of pontifical indult, give their priests power *dispensandi quando expedire videbitur, super esu carnium, ovorum et lacticiniorum tempore jejuniorum et quadragesimae.*[140] 2. The faithful with us, when compelled to labor on holidays, or even on Sundays, do not, as a rule, ask permission from the priest, though they should be admonished to do so.

Art. III.

Duties of Pastors, especially in the United States.

664.—I. *Profession of Faith.*—Irremovable parish priests are bound,[141] within two months at the latest from the day of their obtaining possession of their parishes, to make a public profession of their faith (β) (*professio fidei*) in the presence of the bishop, and to take the oath of obedience to the Roman Pontiff, according to the formula laid down by Pius IV.[142] We said, *irremovable parish priests.* Now, according to some canonists, removable parish priests are also, *jure com.*, obliged to make this profession;[143] according to others, they are not.[144] As pastors in the United States are not even removable *parochi*, they do not—in fact, are not *jure com.*—bound to make the above profession.

665.—II. *Duty of Residence.*—I. Parish priests are bound—at least, *jure ecclesiastico*, and that *sub gravi*—to reside in their parishes. We say, *at least*, etc.; for whether they are obligated also *jure divino* is a disputed question. II. What parish priests are obliged to residence? 1. Both removable and irremovable pastors; 2, administrators of parishes—that is, priests placed in charge of vacant parishes until new pas-

[139] Craiss., n. 1437.
[140] Fac., form. i., n. 27.
[141] Conc. Trid., sess. xxiv., c. xii., d. R.
[142] Bouix, l. c., p. 513.
[143] De Camillis, Inst. J. C., t. iii., p. 248.
[144] Craiss., n. 1446.

tors are appointed; 3, assistants (*coadjutores*) given to pastors who are unable, by reason of sickness or old age, to discharge their duties; 4, other assistants are not bound by the law of residence, though they should not be absent without the permission of the pastor or bishop. III. For certain causes pastors may, at times, be absent from their parishes. Now, what are these causes? 1. For an absence of more than two months a *causa gravis* is required, such as ill-health, *Christiana caritas*,[145] etc. 2. For an absence of only two months, whether continuous or interrupted, any reasonable cause (*causa aequa*)—*v.g.*, the need of recreation—is sufficient. IV. Besides a legitimate cause, the permission of the bishop, in writing, is necessary, and that even for an absence of one week. If, however, a pastor is obliged to absent himself without having time to ask for permission, he may go away, provided he leave some approved priest in his place or request a neighboring pastor to attend to sick-calls and the like, and inform the bishop, as soon as possible, of his absence.[146] V. According to St. Liguori, parish priests teaching theology, Sacred Scripture, or canon law in public institutions—*v.g.*, in diocesan seminaries—may probably be excused from the law of residence, as such teaching redounds to the good of the whole diocese—nay, of the entire Church. The duty of residence, which is particularly urgent during contagious diseases, comprises not only the obligation of physically dwelling in the parish, but also that of laboring for its good. Hence, a pastor cannot leave all the parochial duties in the hands of his assistants, but must personally, unless lawfully hindered, perform some, especially, of the more important ones, such as preaching, administering the sacraments.[147] He may, however, require his as-

[145] Supra, n. 545. What has been said (supra, n. 544–549) concerning the residence of bishops applies in most particulars also to the residence of pastors (Bouix, l. c., p. 518).

[146] Craiss., n. 1461, 1462.

[147] Bouix, l. c., p. 542.

sistants to attend to the more arduous duties, such as sick-calls at night, attending to out-missions. As a rule, pastors should reside *within the limits* of their parishes—nay, in the parochial house, if there be one. VI. *Penalties of Unlawful Absence.*—Pastors absent more than two months in the year without sufficient cause forfeit, *ipso facto*,[148] their salary, in proportion to the time of their absence. According to St. Liguori, however, they forfeit only a part, not the whole, of their salary for the time they were unlawfully absent; for they receive their income not merely for residing, but also for saying the office and performing other duties. VII. *Residence of Pastors in the United States.*—The law of residence, as was seen, binds not only irremovable pastors, but, in general, all priests having charge of souls, and hence also our pastors.[149] Diocesan statutes, with us, usually require that pastors should, if possible, obtain the bishop's leave whenever they are to be absent for an entire week at a time.[150]

666.—III. *Obligation of offering up Mass for the People; of Preaching; of Catechising the Children; and of taking care of the Parochial Schools.*—I. *Obligation of Saying Mass for the Parishioners.*—Canonical parish priests (secular or regular), even though *amovibiles ad nutum*, vicars (*vicarii curati*) of *parochi principales*, and priests (*vicarii temporales*) placed in charge of vacant canonical parishes until a new rector is appointed, are bound on Sundays and holidays of obligation to gratuitously offer up the sacrifice of the Mass for their people. This obligation attaches, generally speaking, also to parish priests in Ireland and Canada,[151] but not (except in some parts of California) to pastors in the United States.[152]

[148] Hence, they cannot in conscience draw or retain such salary, but must apply it to the church or the poor of the place.

[149] Conc. Pl. Balt. II., n. 114; Kenr., tr. viii., n. 43.

[150] Stat. Dioec. Nov., p. 13; Dioec. Boston., n. 217.

[151] C. Prov. Quebec. II., an. 1854; ap. Coll. Lac., iii., p. 654.

[152] Supra, n. 654, 657.

In Ireland, however, pastors are no longer obliged to offer up Mass for their people on suppressed holidays (*i.e.*, on holidays which, though formerly of obligation in Ireland, are so no longer), but only on such holidays as are *still* of obligation, and, of course, also on Sundays.[153] We may here add that bishops cannot compel, though they may exhort, pastors to furnish priests wishing to say Mass in their churches with those things which are necessary for the celebration, such as altar-wine and the like.[154] II. *Duty of Preaching.*—Pastors, even though removable *ad nutum*, as in the United States, are bound, on Sundays and solemn feasts, either personally or, if lawfully hindered, by others, to preach to their people.[155] Sermons should be brief and plain—*i.e.*, adapted to the capacity of the parishioners. It is the common opinion that pastors who do not, either personally or through others, preach for one continuous month, or for three non-continuous months, in the year, sin grievously.[156] Sometimes, however, pastors may omit sermons in order to make up for them at a more opportune time. Thus, it is the custom in some parts of the United States to discontinue preaching for about two months every summer —namely, in July and August. Whether the excessive heat of these months can justify the above practice we leave to others to decide. III. *Duty of Catechising the Children.*—Pastors should also, on Sundays and festivals, instruct the children in the rudiments of the faith (*doctrina Christiana*), or, as it is called with us, in the catechism. In the United States, as elsewhere, this is done usually in Sunday-schools (*scholae doctrinae Christianae*), held, as a rule, every Sunday afternoon in the church or school-house.[157] The pastor, if for just cause hindered from personally holding Sunday-school, may appoint competent persons to take his place.

[153] Syn. Thurl., ap. Coll. Lac., iii., 787 ; cfr. ib., 764.
[154] Supra, 594 (2).
[155] C. Trid., sess. v., c. ii., d. R.
[156] Craiss., n. 1500.
[157] Phillips, l. c., p. 347.

In this country, as a rule, lay persons, male and female, act as Sunday-school teachers. Yet, owing to the difficulty of obtaining competent and painstaking lay teachers, our pastors are exhorted to personally hold, or at least superintend, Sunday-schools. This holds true especially where there are no parochial day-schools.[158] Moreover, children, with us, that have not yet made their first holy communion should, at stated times during the year (*v.g.*, during the Ember days), be instructed by the pastor, and thus prepared either for confession or for their first holy communion.[159] IV. *Duty relative to Catholic Day-Schools.*—Experience teaches that the public or common schools in the United States, owing to their very system, the text-books used, and the class of children frequenting them, in most cases endanger both the faith and morals of Catholic children sent to them.[160] If possible, therefore, a Catholic parochial day-school, where not merely secular knowledge, but also religious instruction, is imparted to the children, should be

[158] Conc. Pl. Balt. II., n. 435, 438. [159] Conc. Pl. Balt. II., n. 442.

[160] Ib., n. 426–430; cfr. Syll., prop. 48. The *schema* (c. xv.) of the *Council* of the *Vatican* "De Ecclesia" proposed: "Inter sanctissimorum jurium violationes, quae nostra aetate . . . perpetrantur, illa est vel maxime perniciosa qua fraudulenti homines contendunt, *scholas omnes directioni ac arbitrio solius potestatis laicae subjiciendas esse.* . . . Quin eo usque progressi sunt, *ut ipsam Catholicam religionem a publica educatione arcere, atque universim scholas nullius professionis religiosae* [*v.g.*, the public schools in the United States], *sed litterarias tantummodo esse debere dicant.* Contra hujusmodi sanae doctrinae morumque corruptelas, ex ipso fine Ecclesiae . . . ab omnibus agnoscendum est jus et officium, quo ipsa (Ecclesia) pervigilat, ut juventus Catholica in primis vera fide et sanctis moribus rite instituatur. . . . Quare declaramus et docemus, jura praedicta atque officia ad Ecclesiam pertinere" . . . (Martin, Doc., p. 47). In connection with this *schema* a proposal (*postulatum*) was made in the *Vatican Council* that *all mixed schools* (called *common* or *public schools* in the United States), *without exception*, should be declared pernicious and condemnable by the Vatican Council (Martin, Arb., p. 76; Doc., p. 90). Cfr. Instructio De Schol. Publ. in Foeder. Stat. Americae Septentr., Nov. 24, 1875.

established in every congregation. The pastor should frequently visit it and see that it is efficiently managed.[161]

667.—IV. *Rights of Pastors respecting the Administration of the Temporalities of their Congregations.*—Church property is, both by ecclesiastical and divine right, exempt from the jurisdiction of the civil government. Hence, 1, laws enacted, *v.g.*, by legislatures in the United States, incapacitating Church corporations from acquiring more than a certain specified amount of property, are null and void.[162] 2. Church property should, as a rule, be exempt from taxation.[163] 3. Rulers confiscating such property as belongs to ecclesiastics by reason of their churches or benefices incur, *ipso facto*, excommunication, reserved at present, *speciali modo*, to the Pope, according to the *C. Ap. Sedis* of Pius IX.[164] Civil governments may, however, obtain, by concession of the Holy See—*v.g.*, by concordats—a certain share in the administration of Church property.

668. *What can or should a pastor do in regard to the management of the temporalities of his congregation?* I. He should make an inventory of all goods belonging to the Church, a copy of which should be sent to the bishop to be filed in the episcopal archives; another should be preserved among the records of the parish. According to the *C. Ap. Sedis* of Pius IX., it is, generally speaking, forbidden, under pain of excommunication *latae sententiae*,[165] to alienate (*i.e.*, to sell, mortgage, lease for more than three years, etc.) Church property, movable or immovable[166]—or, as others express it, ecclesiastical immovables (*bona eccl. immobilia*) and valuable movables (*mobilia pretiosa*)[167]—without permission from the Holy See. We say, (*a*) *generally speaking;* for ecclesiastical

[161] Conc. Pl. Balt. II., n. 431.
[162] Cfr. Konings, n. 620, 621.
[163] Phillips, l. c., p. 431.
[164] Com., n. 64, 65; Avanz. (11), pp. 82, 83.
[165] Com., n. 129, 130. This excommunication, not being reserved, is absolvable by any confessor.
[166] Phillips, l. c., p. 481.
[167] Ferraris, V. Alienare, art. i., n. 3.

things may be alienated without Papal leave—*v.g.*, if they are of little or no use, if recourse to Rome is difficult, etc. We say, (*b*) *of considerable value;* for things, both movable and immovable, worth, *v.g.*, only $25, or, according to some, $100, may be alienated by leave from the bishop.[168] Whether the above law, requiring the pontifical permission for the alienation of Church property, has, by virtue of custom to the contrary, ceased to be obligatory outside of Italy, seems a disputed question.[169] Does it obtain in the United States? It does, so far as lay trustees are concerned; as to others, it does not *de facto.* Fr. Konings [170] seems to think it does *de jure.* 3. Apart from these restrictions, the pastor is the administrator *ex officio* (*administr. natus*) of the property of his congregation. His rights, however, in this matter are always subordinate to the authority of the bishop. He must, therefore, give in a financial statement when required to do so, and, in general, observe the regulations of his ordinary concerning the administration of Church property, so long as they do not conflict with the general laws of the Church or the enactments of the Popes.[171] II. *Can the management of the temporalities of parishes be committed to laymen—v.g., to trustees, as in the United States?* It can, provided these men are appointed by ecclesiastical authority. Pastors in the United States should not appoint their lay trustees without the consent of the bishop.[172] Again, apart from the ordinary expenditures, trustees (*aeditui, matricularii, procuratores, magistri fabricae*), with us, cannot, for any special object, make outlays exceeding $300 without the written permission of the bishop.[173] Moreover, lay trustees and others, with us, appropriating Church moneys or property to their own uses [174] incur, *ipso facto,* excommunication

[168] Craiss., n. 1507, 2915.
[169] Craiss., n. 2922–2925.
[170] N. 1738 (4°).
[171] Bouix, l. c., p. 600.
[172] Conc. Pl. Balt. II., n. 198.
[173] Ib., n. 201.
[174] Ib., n. 197.

simpliciter reserved to the Pope according to the *C. Ap. Sedis* of Pius IX.[175]

669.—V. *Several other Duties and Rights of Pastors.*—1. They should annually make the spiritual exercises. 2. They cannot retire from the *cura animarum* without the bishop's permission. 3. The Council of Trent requires them to keep two registers: one of baptisms (*liber baptismorum*), the other of marriages (*liber matrimoniorum*).[176] In the United States, as in most other countries, they are obligated, moreover, to keep a record of persons confirmed, and of interments;[177] the Roman Ritual also exhorts pastors to keep a *liber status animarum—i.e.*, a register containing the name and condition of each parishioner. Moreover, in some of our dioceses bishops require pastors to have a register of first communicants. 4. They may receive—nay, demand—the customary dues both for the administration (jura stolae) and the giving of certificates of baptisms, marriages, etc.

[175] Avanz. (34); Konings, n. 1740; Com., n. 65 (20).

[176] Phillips, l. c., p. 347.

[177] Conc. Pl. Balt. II., n. 222.

CHAPTER X.

ON ASSISTANT PRIESTS, CHAPLAINS, AND CONFESSORS.

ART. I.

Of Assistants of Pastors, and of Chaplains.

670.—I. *Assistants or vicegerents* (*vicarii, curati, cooperatores, coadjutores, adjutores*) of pastors are chiefly of four kinds: 1. Those who are deputed to take charge of vacant parishes until a new rector is appointed. They are usually styled *oeconomi* or *administratores*. A parish, upon falling vacant, whether by the death, removal, or resignation of its pastor, should, pending the appointment of a new rector, be placed, as soon as possible, in charge of a vicar.[1] In the United States, as elsewhere, the appointment of these vicars belongs to the bishop. 2. Those who have charge of a parish during the absence of its rector; with us, as elsewhere, they are usually chosen by the pastor (before he goes away), with the consent of the bishop. Their salary is determined by the bishop. 3. Assistant priests proper (*vicarii parochiales*), or those priests who are appointed to assist those pastors who (*a*) actually reside and exercise the *cura* in their parishes, and (*b*) whose parishes are too large to be attended to by one priest. These alone can, strictly speaking, be called assistants, the two foregoing kinds being rather vicegerents than assistants. *De jure communi*, the appointment of these assistants belongs to pastors, not to bishops.[2] We say, *de jure communi;* for in

[1] Bouix, De Paroch., p. 630.

[2] Ib., p. 434.

many countries—*v.g.*, in Canada,[3] Ireland,[4] the United States, etc.—they are now appointed by the bishops, though frequently at the suggestion of the pastor to whom they are assigned. The bishop also determines their salary and changes them. Assistants have, by their very appointment as assistants, power to administer all the sacraments (except, of course, those of confirmation and order), unless their faculties are expressly limited.[5] 4. Those assistants (*coadjutores*) whom the bishop associates with pastors who, though otherwise of irreproachable character, are incapable of properly governing their parishes, either because they are too illiterate or afflicted with continual infirmity, bodily or mental. In this case the appointment of the assistants pertains, *jure com.*, to the bishop, not to the pastor.[6]

671.—II. *Chaplains* (*capellani*) are priests attached to hospitals, prisons, and the like for the purpose of exercising the sacred ministry.[7] Their peculiar rights and duties are usually determined by the ordinary according to the requirements of the institutions or places with which they are connected. There are various kinds of chaplains—namely, chaplains (*a*) of nuns or convents, (*b*) of colleges or other similar institutions, (*c*) of hospitals, asylums, protectories, prisons, and the like, (*d*) of soldiers, etc. The Provincial Council of Dublin requires chaplains of soldiers, prisons, and other public institutions, at stated times, to inform the bishop of the moral and religious condition of these institutions.[8] I. *Chaplains of nuns or sisters* (*capellani monialium*) should be of mature age—*i.e.*, about forty years of age. II.

[3] C. Queb. II., an. 1854; ap. Coll. Lac., iii., 657.

[4] Syn. Thurl., ap. Coll. Lac., iii., 790.

[5] Craiss., n. 1519.

[6] A number of German bishops proposed, at the *Vatican Council*, that, in regard to pastors incapable of governing their parishes, bishops might be allowed not only to give them assistants with powers of administration, but also to transfer them against their will or retire them upon a suitable pension (Martin, Doc., p. 172).

[7] Devoti, l. i., tit. iii., n. 93.

[8] C. Prov. Dublin., an. 1853, ap. Coll. Lac., iii., p 805.

Military chaplains (*capellani militum*), in order to be able to administer the sacraments of penance, Holy Eucharist, and Extreme Unction to soldiers in garrison or stationary camps (*v.g.*, to soldiers in the United States stationed in forts), must, as a rule, be approved by the bishop of the place where the quarters are situate, unless they have special faculties from the Holy See.[9] We say, *in garrison;* for chaplains of soldiers mobilized or actually engaged in military expeditions can administer the above sacraments,[10] and also—at least, where the Tridentine decree *Tametsi* is not published—the sacrament of matrimony, without the approbation of the bishops of the places where they may be. If soldiers in stationary camps have no military chaplain, they are to be considered *vagi*, and, consequently, fall under the authority of the pastor of the place where they are. III. *As regards chaplains of ships* (*capellani navium*), we subjoin the following decision[11] of the Holy See. *Dubium:* "An sacerdotes iter transmarinum suscepturi, facultate ob ordinario loci unde naves solvunt, donari possunt, ad excipiendas fidelium confessiones, tempore navigationis?" *Responsum:* "Posse sacerdotes iter arripientes ab ordinariis locorum, unde naves solvunt adprobari, ita ut itinere perdurante, fidelium, secum navigantium confessiones valide ac licite excipere valeant, usque dum perveniant ad locum, ubi alius superior ecclesiasticus jurisdictione pollens constitutus sit."[12] From this decision it follows: 1. It is certain, at present, that priests—for instance, in the United States—embarking for Europe may be approved for confessions by the ordinary of the port whence the vessel starts or weighs anchor, and that, by virtue of this approbation, they may, even out of the case of necessity, administer the sacrament of penance to their

[9] Craiss., n. 1544.

[10] Konings, n. 1394, q. 15; cfr. Brief of Pius IX., July 6, 1875, ap. Analecta J. P., p. 1136 (14 ser.)

[11] C. S. O., March 17, 1869.

[12] Ap. Past. Blatt. S. Louis, Sept., 1876.

fellow-passengers during the voyage—*i.e.*, until they land at a port where another ordinary resides.[13] 2. Where a vessel or ocean steamer puts to sea from several ports—*v.g.*, first from New York, then from Boston—priests going aboard at New York may be approved by the ordinary of New York, and priests embarking in the same vessel at Boston by the ordinary of Boston.

Art. II.

Of Confessors.

§ 1. *Of Confessors who are neither Canonical Parish Priests, nor Vicars-General, nor Regulars.*

672.—I. *Necessity of Approbation.*—Not only the *potestas ordinis*, but also the *potestas jurisdictionis*, is required in order that one may validly impart sacramental absolution. Hence, the minister of the sacrament of penance must (*a*) be a priest, (*b*) and have permission to hear confessions.[14] Canonical parish priests receive this jurisdiction by their very appointment as pastors; other priests must have the permission or approbation of the bishop. Strictly speaking, approbation (*approbatio*) differs from the giving of faculties (*collatio jurisdictionis*); the former is merely an authentic *declaration* by the ordinary that a priest is qualified to hear confessions; the latter confers the *power* itself *in actu* to do so. Still, as at present both are usually given simultaneously to secular priests, the two terms have come to be used synonymously. II. *By whom is the approbation or faculty to hear confessions to be given?* By the bishop of the place where the confessions are heard. Hence, priests approved for one diocese cannot hear in another by whose bishop they are not approved. The same holds of regular confessors, so far as their hearing secular persons (lay *or* clerical) is concerned. By the bishop we here

[13] Cfr. Craiss., n. 1549.

[14] Supra, n. 224.

mean also vicars-general, chapters, vicars-capitular (with us, administrators), and prelates having *jurisdictio episcopalis.* The bishop, even while out of his diocese, may give priests permission to hear in his diocese. III. *Withdrawal, etc., of Faculties.*—1. The bishop cannot lawfully (*a*) refuse, (*b*) or give but limited faculties, (*c*) or withdraw them, whether limited or unlimited, except for just cause. We said, *lawfully;* for the bishop may, even without cause, *validly* refuse, restrict, or withdraw faculties.[15] 2. Faculties conceded by the bishop without limit of time—*v.g.*, those granted *usque ad revocationem*—though revocable at any time, do not, however, of themselves lapse by the death or removal of the bishop by whom they were given.[16] This, however, does not hold of faculties conceded by bishops *ad beneplacitum nostrum* or *ad arbitrium nostrum.*[17]

§ 2. *Of Confessors who are Vicars-General and Canonical Pastors.*

673.—I. *Vicars-general* do not require an approbation or faculties from the bishop for confessions. For they have, by their very appointment to the vicar-generalship, *jurisdictio ordinaria* throughout the diocese.[18] II. *Canonical parish priests,* in like manner, do not need any approbation to hear their own parishioners,[19] even out of their parish or diocese. They cannot, however, out of their parishes, hear non-parishioners, unless they are expressly or tacitly approved by the bishop for this purpose. Pastors in the United States,[20] not being canonical parish priests, cannot hear confessions by virtue of their appointment as pastors, but must

[15] Konings, n. 1392, q. 4°, 5°, 6°.
[16] Ferraris, V. Approbatio, art. i., n. 10; Bouix, De Episc., t. ii., p. 246.
[17] Konings, 1393.
[18] Supra, n. 627, 628 (2).
[19] Or others coming to them in their parishes.
[20] As to California, see supra, n. 654.

be approved by the bishop. Pastors and assistants, with us, are, as a rule, approved for the whole diocese.

§ 3. *Of Confessors who are Regulars.*

674.—I. Regulars, unless they are canonical parish priests, to be able to hear seculars, must, like secular priests, be approved by the bishop of the place where they hear the confessions. We say, *seculars;* for, so far as concerns their hearing (male) members of their own order, they are approved, not by the bishop, but by their own superiors.[21] It is, however, the common opinion that although they must be approved by the bishop or their prelate, they nevertheless receive jurisdiction directly from the Pope. II. The bishop cannot, without just cause, lawfully, though he may validly, refuse regulars faculties to hear *seculars* (lay *or* clerical). He may limit such faculties as to time, place, or persons—at least, in the case of regulars who might be somewhat more competent. We say, *at least;* for, according to Bouix,[22] a bishop, upon examining regulars prior to approving them for seculars, and finding them entirely qualified (*generaliter idoneos*) to hear confessions, must give them unlimited faculties. Benedict XIV., however, according to Bouix, holds the contrary. Again, the bishop may, as a rule, withdraw from individual regulars faculties to hear lay persons. We say, 1, *as a rule;* for if he himself has, upon previous examination, given them unlimited faculties, he cannot himself deprive them of, or even restrict, their faculties, save "ex *nova* superveniente causa *confessiones concernente*."[23] We say, 2, *from individual*, etc.; for he cannot, without the consent of the Holy See, withdraw faculties from all the members of a religious community; except in countries far away from the Holy See, and then only *ex gravissima causa.* III. *Can regulars sometimes confess to priests not belonging to their order?* Professed members of re-

[21] Supra, n. 618. [22] De Jur. Reg., t. ii., p. 230. [23] Bouix, l. c., p. 243.

ligious orders should, as a rule, confess to confessors of their own order. We say, first, *professed*, etc.; for novices and lay servants living in the monastery can go both to the religious confessors of the monastery who are not approved by the bishop to hear seculars, and to extraneous priests having faculties from the bishop to hear seculars. We say, secondly, *as a rule;* for, 1, in time of jubilee they can, without permission from their superiors, confess to any priest approved by the bishop, and be absolved by him, even, as a rule, from censures inflicted by the regular superior.[24] 2. In case of necessity—*v.g.*, if, while travelling or out of the monastery, in order to preach, give missions, and the like,[25] they have no confessor of their own order within reach—they may, by the presumptive permission of their superior, confess to any competent priest, regular or secular, even though not at all approved for confessions.[26] Observe, by regulars we here mean only professed members of orders approved by the Holy See—nay, only such as are exempt from episcopal authority.

§ 4. *Confessors of Nuns, especially in the United States.*

675. *De jure communi*, a *special* approbation is required to validly hear nuns proper—that is, nuns having solemn vows and observing Papal (or canonical) enclosure. We say, *a special approbation;* hence, (*a*) priests, secular or regular, approved by bishops in the ordinary manner only, (*b*) and even canonical parish priests, cannot, unless *specially* approved for nuns, hear them.[27] By whom is this *special* approbation to be given? By the bishop of the place where the nuns are heard. Observe, however, that if the nuns are subject to regular prelates, the *designation* of their confessor belongs to the regular prelate, the *approbation proper* to the

[24] Varc., p. 195. [25] Ferraris, l. c., art. ii., n. 9–15.

[26] Bouix, l. c., p. 252. Capuchins, however, can, in the above case, confess to priests only who are approved by the bishop of the place.

[27] Ferraris, l. c., art. iii., n. 1–4.

bishop; if they are subject to bishops or directly to the Holy See, the appointment in full—that is, the designation as well as the approbation—pertains to the bishop. As a rule, but one confessor should be appointed for a convent. The ordinary confessor, even of nuns, having but simple vows, can be appointed neither for a longer nor a shorter period than three years. But in the United States and other places where it is customary to appoint them without limit of time, their approbation is valid until withdrawn by word or deed.[28] A confessor appointed for one convent cannot, unless he is approved for nuns in general, validly hear nuns in another convent. Extraordinary confessors should be given nuns two or three times a year. A confessor appointed to act *once only* as *extraordinarius* cannot do so a second time, unless he is reappointed.[29]

676. *Confessors of Nuns or Sisters in the United States.*— What has been thus far said applies chiefly to nuns bound by solemn vows. We therefore ask: Is a special approbation necessary to hear the confessions of sisters or nuns in the United States? We premise: All our sisters, with the exception of those of several houses of the Visitation, or where a special Papal rescript has been obtained, have but simple vows. We now answer: 1. It is certain that, *de jure particulari*, a special approbation may be needed. In other words, our bishops may ordain that pastors and confessors in general cannot validly hear sisters without a *special* approbation. 2. But is such special approbation requisite with us, *de jure communi?* There are two opinions. Kenrick[30] holds the affirmative. Others, who maintain the negative, contend that everything depends upon the will of the bishop; that, nevertheless, it is the *desire* of the Holy See that *special* confessors be appointed for nuns having but

[28] Kenr., tr. xviii., 139; Gury., t. ii., n. 565.
[29] Bouix, l. c., p. 258; Ferr., l. c., n. 8, 9.
[30] L. c., n. 142; Bouix, De Episc., t. ii., p. 255

simple vows.[31] As a matter of fact, in many of our dioceses[32] a *special* approbation is required. Again, as all sisters,[33] with us (since there is no special Papal rescript exempting any of them), are subject to the bishops of the dioceses where they are, their confessors, ordinary and extraordinary, are designated as well as approved solely by the bishop of the place where the confessions are heard. Hence, the regular prelates (*i.e.*, abbots, generals, provincials) of the Benedictine, Dominican, and Franciscan orders in the United States cannot present to bishops the confessors respectively of Benedictine, Dominican, and Franciscan sisters in this country; *à fortiori*, neither can these superiors[34] themselves hear such nuns without episcopal approbation.

§ 5. *Of Confessors in relation to Reserved Cases—Of Reservations and Censures, as in force at present, according to "Const. Ap. Sedis" of Pope Pius IX., issued Oct.* 12, 1869 *—Special Powers of Bishops in the United States respecting these Reservations.*

677. *Definition.*—By reserved cases (*casus reservati*) are meant certain more grievous sins from which ordinary or inferior confessors cannot absolve without a *special* approba-

[31] Konings, n. 1399, q. 2.

[32] In the diocese of Boston no special approbation is needed to hear Sisters of Charity; nor in the archdiocese of Baltimore.

[33] As Sisters of the orders of SS. Benedict, Dominic, etc., with us, have but simple vows, they are subject not to the regular prelates of the above orders respectively, but to bishops. The sixteenth ch. of the *schema* (relative to religious) of the *Vatican Council* proposed that all sisters with but simple vows, even though under a superioress-general, should be entirely subject to bishops, except in regard to their constitution as approved by Rome (Mart., Arb., p. 127). Again, the above nuns are not bound by the law of Papal enclosure. But the c. vi. of the *schema* "de clausura" of the *Vatican Council* proposed to enjoin enclosure *in a moderate form* on all nuns having but simple vows (Mart., Doc., p. 238).

[34] Whether regular prelates can, without episcopal approbation, hear nuns, *subject to themselves*, is a disputed question (Bouix, De Jur. Reg., t. ii., p. 257). No nuns in the United States are subject to regular prelates.

tion. I. *Conditions of Reservations.*—As a rule, no sin is reserved unless it is (*a*) mortal, (*b*) external, (*c*) certain, (*d*) complete, (*e*) committed by adults.[35] We say, 1, *mortal;* for, according to the Council of Trent, only *atrociora quaedam et graviora crimina* should be reserved. The sin should be mortal, not only internally but also externally. 2. *External;* the Church sometimes reserves *occult*,[36] but never merely *internal*, sins. 3. *Certain;* hence, no reservation is incurred where it is doubtful (*a*) whether the sin was committed or whether it is mortal internally and externally (*dubium facti*); (*b*) whether it is reserved (*dubium juris*). 4. *Complete;* thus, where murder is reserved, a person merely inflicting wounds, even though serious, does not incur the reservation, unless the contrary is expressly stated. 5. *Committed by adults;* hence, boys under fourteen and girls under twelve years of age do not, except where the contrary is stated, incur reservations. This fifth condition, however, is not admitted by all. II. *Who can reserve cases?* The prelates of the Church only—that is, those who have jurisdiction both *in foro interno* and *externo;* in other words, the Pope for the entire Church, the bishop for his diocese, superiors of religious communities for such communities. Accordingly, reserved cases are divided into Papal, episcopal, and regular. Regular prelates, however, in order to be able to reserve more than the eleven cases permitted by the *jus commune*, must have the consent of the general chapter of the whole order if the reservation is to extend over the entire order, and of the provincial chapter if only over the province.[37] *Note.*—Not only professed members (whether priests or lay-brothers) of exempt orders, but also their novices, candidates from the time they are accepted for the order, and servants living in the monastery, are, as a rule, exempt from episcopal reservations.

678.—III. *Does ignorance of the censure or reservation pre-*

[35] Craiss., n. 1596–1601. [36] Cfr. supra, n. 580. [37] Varc., pp. 739, 743.

vent its being incurred? As to censures, it does. As to reservations, we distinguish: The sin is reserved, either with or without censure. If it is reserved without censure, the question is controverted. If with censure, we must again distinguish: The case is reserved either to the Pope[38] or to bishops. It is certain that ignorance exempts from the former. Does it also exempt from the latter? The question is disputed. According to Varceno[39] and others, it does, if the case is reserved to bishops by the *jus commune—v.g.*, the three excommunications reserved to bishops in the *Const. Ap. Sedis* of Pope Pius IX.; but if the sin is reserved by the bishop himself, whether in or out of synod, ignorance excuses merely from the censure, not from the reservation. Others, however, hold that ignorance excuses from *all* reservations, whether Papal or episcopal, whether with or without censure, chiefly because reservations are always penal.[40]

679. *Who can absolve from reserved cases?* 1. The person reserving; 2, his superior or successor; 3, those delegated by the persons just mentioned; 4, sometimes inferiors. It is certain,[41] according to the *C. Ap. Sedis* of Pius IX., that regulars can no longer absolve from cases reserved to bishops by the *jus commune* (*v.g.*, by the *C. Ap. Sedis*).[42] I. *Can a person who has incurred a reservation in his own diocese or place of domicile confess in another diocese where the sin is not reserved, and there be absolved by any ordinary confessor?* There is question of cases reserved, either with or without censure. As to the latter, we reply in the affirmative, with the proviso already mentioned.[43] As to the former (*i.e.*, cases with censure), we distinguish: The censures are reserved either *ab homine*, and that *per sententiam particularem*, or *a jure*. As to the first, we reply negatively, such censures being absolvable by the person only who inflicted them, or

[38] See infra, n. 681. [39] P. 744. [40] Baller. ad Gury., t. ii., n. 711.
[41] Cfr. Craiss., n. 1630. [42] Cfr. supra, n. 582. [43] Supra, n. 582.

by his successor, superior, or one delegated by them. As to the second, the question is disputed. Practically, the affirmative may, by reason of custom, be acted upon, provided the penitent does not act chiefly *in fraudem legis.*[44] II. *Can an ordinary confessor, out of the above case, sometimes absolve from reservations?* He can, in two cases: 1. *In articulo* or *periculo mortis.* In this case he can absolve not only from reserved sins, but also from reserved censures, and that even though the superior or confessor having the requisite special faculties be present or within reach.[45] Nay, in default of an approved priest, *any priest* can so absolve. Now, is a penitent thus absolved obliged, in case he survives, to present himself, as soon as convenient after his convalescence, to the superior or confessor having the requisite special faculties? If the case is reserved without censure, he is not; if with censure, he is, though at present, according to Varceno, only in case he has incurred one of the fourteen censures reserved, *speciali modo,* to the Roman Pontiff by our Holy Father Pius IX. 2. *In case of necessity;* thus, if it is impossible, even by letter, to recur to the superior, and there is a pressing cause—*v.g.*, danger of scandal or loss of good name, arising, *v.g.*, out of a priest's omitting to say Mass—any ordinary confessor can absolve indirectly from cases reserved to the bishop, or even to the Pope if the bishop cannot be applied to.[46] We say, indirectly; hence, the penitent must afterwards present himself, when able to do so, to a confessor having power to absolve from the reservation (*practically,* to the same confessor, after the latter has obtained the necessary faculties from the bishop).[47]

680. In how many ways can cases be reserved? In two: 1. *Ratione sui tantum*—that is, without censure, and merely because of the sin. 2. *Ratione censurae*—that is, with and on

[44] Craiss., 1612; Varc., p. 746.
[45] Varc., p. 748.
[46] Craiss., 1618.
[47] Konings, n. 1403.

account of censures. Observe, most episcopal cases are reserved without censure; nearly all Papal cases, with censure.

681. *Censures reserved at present to the Sovereign Pontiff.*[48]—I. *How many cases are now reserved to the Pope without censure?* These two: 1. If any one (male or female), either personally or through others, falsely accuses an innocent priest of the *crimen sollicitationis* before ecclesiastical judges; 2, if a person accepts from *religious proper* of either sex gifts worth more than ten Roman *scudi* (dollars). Ferraris, however, holds that this case is not reserved to the Pope. Moreover, a decision of the S. Poenit., March 15, 1861, assumes it to be reserved merely to bishops.[49] Observe, not the religious who makes, but the person who accepts, the presents incurs the reservation. Again, religious proper of both sexes may, with leave from their superiors, make donations for various reasons—*v.g.*, in token of benevolence, to assist needy relatives; and persons accepting gifts thus proffered do not incur the reservation.[50] II. *How many cases are at present reserved to the Pope with censure (ratione censurae)?* We premise: At the present day, according to the *C. Ap. Sedis* of Pius IX., by which the ecclesiastical censures *latae sententiae* were limited, the cases reserved to the Sovereign Pontiff, with censure (namely, excommunication), are of two kinds: 1. Some are reserved *speciali modo*—that is, in such manner as to be absolvable neither by bishops (unless they obtain, like bishops in the United States, *special and express* faculties from Rome to do so), nor by others howsoever

[48] A number of French and German bishops submitted proposals at the *Vatican Council* requesting that the cases reserved to the Pope, with or without censure, be reduced to as small a number as possible, if not altogether abolished, and that each new Pontiff, in the beginning of his pontificate, should deign to publish to the entire Church a list of cases he intended to reserve to himself, with the provision that all reservations of former Popes not contained in this list should be considered as, *eo ipso*, abrogated (Martin, Arb., p. 106; Doc., pp. 155, 171). [49] Craiss., n. 1603. [50] Varc., p. 740.

otherwise privileged.[51] 2. Others are reserved *simpliciter*—that is, in such manner that bishops as Papal delegates *in occultis*, where the Council of Trent is received, and others authorized in a general manner to absolve from Papal cases, may absolve from them.[52] We now answer: At present only fourteen cases are reserved to the Pope,[53] *speciali modo* (namely, twelve in the *C. Ap. Sedis*, Oct. 12, 1869, and two respectively by the *C. Romanus Pontifex*, Aug. 28, 1873, and decree *S. Poenit.*, Aug. 4, 1876), and twenty *simpliciter* (namely, eighteen in the *C. Ap. Sedis* and two respectively by decree C. S. O., Dec. 4, 1872, and *Encycl.* of Pope Pius IX., Nov. 1, 1870).[54]

682. *Cases reserved to Bishops at present.*—They are, as we have shown,[55] of two kinds: Some are reserved by bishops themselves; others by or in the *jus commune*—*v.g.*, in the *C. Ap. Sedis*. Now, the *jus commune* reserves cases to bishops (*a*) either in a general manner, (*b*) or specifically—*i.e.*, by name. I. *What cases are at present reserved in a general way to bishops by the jus commune?* 1. All cases to which an excommunication *simpliciter* reserved to the Pope is attached in the *C. Ap. Sedis* of Pius IX., whenever they are occult.[56] We say, *simpliciter reserved*, etc.; for bishops cannot, by virtue of the *jus commune*, absolve from any of the above fourteen cases reserved, *speciali modo*, to the Pope, even when they are occult. 2. All cases whatever reserved to the Sovereign Pontiff, even though *speciali modo* in and out of the *C. Ap. Sedis* of Pius IX., and even though public or notorious, when the delinquent is canonically hindered from presenting himself in person to the Holy See. We say, *in person;* for he is not obliged to recur to the Holy See by letter or proxy.[57] Now, what persons are considered as canonically unable to go to Rome? The inability is either permanent or temporary. It is permanent when it lasts ten,

[51] C. Ap. Sedis, § *A quibus;* Com. Ed. Mauri, n. 172.
[52] Varc., pp. 741, 940. [53] Konings, n. 1717, ed. 3ia. [54] Ib., n. 1732.
[55] Supra, n. 582. [56] Craiss., n. 1649. [57] Varc., p. 122.

or, according to some, five, years; it is temporary when it continues less than ten or five years (though not if it lasts less than six months). The following persons are said to be permanently hindered from going to Rome: Women, except where they are expressly marked with censure, as nuns violating enclosure; sexagenarians; servants; those who are poor, labor under chronic and serious diseases, or are condemned to perpetual imprisonment; those who are obliged to support a family or administer its property; those who fill a public position which they cannot relinquish without grave or public detriment; religious; boys under the age of puberty, even though they ask for absolution after they attain to the age of puberty; sons under the control of their parents; seminarians, soldiers, etc.; finally, all others who cannot go to Rome without grave loss, temporal or spiritual. *Note.*—Those who are permanently unable to present themselves to the Holy See can be absolved absolutely (so that they need not afterwards, even when they become able, go to Rome) by the bishop or his delegate; those, on the other hand, who are but temporarily unable, can be absolved by the bishop or confessor authorized by him, even out of the case of necessity, though only conditionally or *ad reincidentiam*, so that if they do not, when able, present themselves to the Holy See, they, *ipso facto*, reincur the censure.[58] Again, as bishops can, *de jure communi*, absolve from the above Papal cases, they can also empower their priests to do so.

683.—II. *What cases are at present specifically—i.e., by name—reserved to bishops in the jus commune?* The *jus commune—i.e.*, for the purposes concerned, the *C. Ap. Sedis* of Pope Pius IX.—declares the following persons subject to excommunication *latae sententiae* reserved to bishops or ordinaries: "1. Clericos in sacris constitutos, vel regulares aut moniales post votum solemne castitatis, matrimonium con-

[58] Com. Ed. Mauri, n. 167, 168, 173.

trahere praesumentes; necnon omnes cum aliqua ex praedictis personis matrimonium contrahere praesumentes. 2. Procurantes abortum, effectu secuto. 3. Litteris apostolicis falsis scienter utentes, vel crimini ea in re cooperantes." These three cases only are at present reserved by name to bishops in the *jus commune.*[59]

684. *What special powers of absolving from Papal cases have bishops in the United States by virtue of their faculties from the Holy See?*[60] They have the power "*absolvendi ab omnibus censuris in C. Ap. Sedis, dd.* 12 *Oct.*, 1869, *Romano Pontifici etiam speciali reservatis, excepta absolutione complicis in peccato turpi.*"[61] This Papal concession includes all cases whatever reserved to the Sovereign Pontiff in the *C. Ap. Sedis*, except the faculty of absolving, 1, one's accomplice *in peccato turpi;* 2, a confessor who dares to absolve his partner *in peccato turpi*,[62] and that even though the case be occult; 3, a person,

[59] Craiss., n. 1653.

[60] In the *Vatican Council* several proposals were made by a number of German and French bishops to the effect that the faculties of absolving from Papal reservations, dispensing from impediments, etc., which the Holy See usually communicates to bishops only for a certain time—*v.g.*, for three, five, or ten years—or only for a determinate number of cases, be henceforward delegated to them *for the whole term of their episcopate* (Martin, Arbeiten, p. 95; Doc., pp. 149, 171).

[61] Fac., form. i., n. 16.

[62] However, Pope Pius IX., by decree of the S. C. Prop. Fid., Jan. 24, 1868, granted this faculty (namely, *absolvendi a censuris et poenis ecclesiasticis sacerdotes, qui personae complicis in peccato turpi confessiones excipere, eamque absolvere ausi fuerint, et cum iisdem super irregularitate a violatione dictarum censurarum quomodocunque contracta dispensandi*) to every archbishop, bishop, and vicar-apostolic of the United States, 1, but only for fifteen cases; 2, and exercisable by each in his diocese or vicariate, either personally or through his vicar-general, or through worthy confessors; 3, to be deputed by himself or his vicar-general *specially* for this purpose; 4, and with the express mention of the Papal authorization; 5, in favor only of such priests as cannot, without evident danger of causing scandal among the faithful, observe the censures which they incurred by absolving their accomplices; 6, on condition (*a*) that the priests thus absolved and dispensed with shall, within two months, or some other suitable time, to be fixed by the dispenser, either directly or

male or female, who falsely accuses a priest of *sollicitatio* in confession; 4, from heresy, apostasy from the faith, and schism in the cases already mentioned.[63] Observe, Pope Pius IX., by decrees of the S. U. Inq., respectively dated June 17, 1866, and April 4, 1871, ordained that in all Papal concessions whatever, empowering bishops (even of the United States) to absolve from cases reserved to the Holy See even *modo speciali*, the power to absolve from the cases under n. 2 and 3 should always be excepted, and that even expressly as to case n. 2. Hence, the latter case is said to be reserved to the Pope *modo specialissimo*.[64] From what has been said, it is evident that our bishops can, except in the four cases given, absolve absolutely (so that the penitent need never afterward present himself to the Holy See) from all cases or excommunications whatever, whether reserved *simpliciter* or *modo speciali* to the Pope in or out of the *C. Ap. Sedis*, even when they are notorious—nay, even where the delinquent can go to Rome. They can—in fact, usually do—communicate these faculties to their priests.[65] Later on (in a future work), when we come to treat of censures, we shall explain in detail the *C. Ap. Sedis* of Pius IX.

through their confessors, and without mentioning the names, recur to the S. C. Prop. Fid. and state the number of their accomplices and how often they absolved from the sin of complicity; (*b*) and that they be bound to obey the orders of the aforesaid S. C. in this matter, on pain of otherwise reincurring the same censures and penalties; 7, they should also receive a suitable penance, and be commanded to abstain altogether from hearing the confessions of their accomplices; finally, all else, as required by law, should be enjoined (Konings, p. lxxi.; Conc. Pl. Balt. II., p. 146, decr. i.)

[63] Supra, n. 581 (notes 277, 278). [64] Avanz., p. 18. [65] Fac., l. c., n. 28.

APPENDIX.

I.

CONSTITUTIO SS. D. N. PII PP. IX., QUA NUMERUS CENSURARUM LATAE SENTENTIAE RESTRINGITUR.

D. 12. OCT., 1869.

PIUS EPISCOPUS SERVUS SERVORUM DEI AD PERPETUAM REI MEMORIAM.

Apostolicae Sedis moderationi convenit, quae salubriter veterum canonum auctoritate constituta sunt, sic retinere, ut, si temporum rerumque mutatio quidpiam esse temperandum prudenti dispensatione suadeat, eadem Apostolica Sedes congruum supremae suae potestatis remedium ac providentiam impendat. Quamobrem cum animo nostro jampridem revolveremus, ecclesiasticas censuras, quae per modum latae sententiae ipsoque facto incurrendae ad incolumitatem ac disciplinam ipsius Ecclesiae tutandam, effrenemque improborum licentiam coercendam et emendandam sancte per singulas aetates indictae ac promulgatae sunt, magnum ad numerum sensim excrevisse ; quasdam etiam, temporibus moribusque mutatis, a fine atque causis, ob quas impositae fuerant, vel a pristina utilitate atque opportunitate excidisse ; eamque ob rem non infrequentes oriri sive in iis, quibus animarum cura commissa est, sive in ipsis fidelibus dubietates, anxietates angoresque conscientiae ; nos ejusmodi incommodis occurrere volentes, plenam earumdem recensionem fieri nobisque proponi jussimus, ut, diligenti adhibita consideratione, statueremus, quasnam ex illis servare ac retinere oporteret, quas vero moderari aut abrogare congrueret. Ea igitur recensione peracta, ac venerabilibus fratribus nostris S. R. E. cardinalibus in negotiis fidei generalibus inquisitoribus per universam Christianam rempublicam deputatis in consilium adscitis, reque diu ac mature perpensa, motu proprio, certa scientia, matura deliberatione nostra, deque apostolicae nostrae potestatis plenitudine hac perpetuo valitura Constitutione decernimus, ut ex quibuscumque censuris, sive excommunicationis, sive suspensionis, sive interdicti, quae per modum latae sententiae ipsoque facto incurrendae hactenus impositae sunt, nonnisi illae, quas in hac

ipsa Constitutione inserimus, eoque modo, quo inserimus, robur exinde habeant; simul declarantes, easdem non modo ex veterum canonum auctoritate, quatenus cum hac nostra Constitutione conveniunt, verum etiam ex hac ipsa Constitutione nostra, non secus ac si primum editae ab ea fuerint, vim suam prorsus accipere debere.

Excommunicationes Latae Sententiae Speciali Modo Romano Pontifici Reservatae.

Itaque excommunicationi latae sententiae speciali modo Romano Pontifici reservatae subjacere declaramus:

I. Omnes a Christiana fide apostatas, et omnes ac singulos haereticos, quocumque nomine censeantur, et cujuscumque sectae existant, eisque credentes, eorumque receptores, fautores, ac generaliter quoslibet illorum defensores.

II. Omnes et singulos scienter legentes sine auctoritate Sedis Apostolicae libros eorumdem apostatarum et haereticorum haeresim propugnantes, necnon libros cujusvis auctoris per Apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes et quomodolibet defendentes.

III. Schismaticos et eos, qui a Romani Pontificis pro tempore existentis obedientia pertinaciter se subtrahunt vel recedunt.

IV. Omnes et singulos, cujuscumque status, gradus seu conditionis fuerint, ab ordinationibus seu mandatis Romanorum Pontificum pro tempore existentium ad universale futurum concilium appellantes, necnon eos, quorum auxilio, consilio vel favore appellatum fuerit.

V. Omnes interficientes, mutilantes, percutientes, capientes, carcerantes, detinentes, vel hostiliter insequentes S. R. E. cardinales, patriarchas, archiepiscopos, episcopos, Sedisque Apostolicae legatos, vel nuncios, aut eos a suis dioecesibus, territoriis, terris, seu dominiis ejicientes, necnon ea mandantes, vel rata habentes, seu praestantes in eis auxilium, consilium vel favorem.

VI. Impedientes directe vel indirecte exercitium jurisdictionis ecclesiasticae sive interni sive externi fori, et ad hoc recurrentes ad forum saeculare ejusque mandata procurantes, edentes, aut auxilium, consilium vel favorem praestantes.

VII. Cogentes, sive directe sive indirecte, judices laicos ad trahendum ad suum tribunal personas ecclesiasticas praeter canonicas dispositiones: item edentes leges vel decreta contra libertatem aut jura Ecclesiae.

VIII. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quaelibet a Sede Apostolica, vel ab ejusdem legatis aut delegatis quibuscumque profecta eorumque promulgationem vel executionem directe vel indirecte prohibentes, aut eorum causa sive ipsas partes, sive alios laedentes, vel perterrefacientes.

IX. Omnes falsarios litterarum apostolicarum, etiam in forma brevis ac supplicationum gratiam vel justitiam concernentium per Romanum Pontificem, vel S. R. E. vice-cancellarios seu gerentes vices eorum aut de mandato ejusdem Romani Pontificis signatarum: necnon falso publicantes litteras apostolicas, etiam in forma brevis, et etiam falso signantes supplicationes hujusmodi sub nomine Romani Pontificis, seu vice-cancellarii aut gerentis vices praedictorum.

X. Absolventes complicem in peccato turpi etiam in mortis articulo, si alius sacerdos licet non adprobatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo, possit excipere morientis confessionem.

XI. Usurpantes aut sequestrantes jurisdictionem, bona, reditus ad personas ecclesiasticas ratione suarum Ecclesiarum aut beneficiorum pertinentes.

XII. Invadentes, destruentes, detinentes per se vel per alios civitates, terras, loca aut jura ad Ecclesiam Romanam pertinentia; vel usurpantes, perturbantes, retinentes supremam jurisdictionem in eis; necnon ad singula praedicta auxilium, consilium, favorem praebentes.[1]

A quibus omnibus excommunicationibus huc usque recensitis absolutionem Romano Pontifici pro tempore speciali modo reservatam esse et reservari; et pro ea generalem concessionem absolvendi a casibus et censuris sive excommunicationibus Romano Pontifici reservatis nullo pacto sufficere declaramus, revocatis insuper earumdem respectu quibuscumque indultis concessis sub quavis forma et quibusvis personis etiam regularibus cujuscumque ordinis, congregationis, societatis et instituti, etiam speciali mentione dignis et in quavis dignitate constitutis. Absolvere autem praesumentes sine debita facultate, etiam quovis praetextu, excommunicationis vinculo Romano Pontifici reservatae innodatos se sciant, dummodo non agatur de mortis articulo, in quo tamen firma sit quoad absolutos obligatio standi mandatis Ecclesiae, si convaluerint.

[1] To the above twelve cases Pius IX., in his *C. Romanus Pontifex*, Aug. 28, 1873, added a thirteenth, which the following persons incur: 1. Canonici ac dignitates cathedralium ecclesiarum vacantium, qui ausi fuerint concedere et transferre ecclesiae vacantis curam, regimen et administrationem, sub quovis titulo, nomine, quaesito colore . . . in nominatum et praesentatum a laica potestate ex S. Sedis concessione seu privilegio, vel, ubi consuetudo viget, a capitularibus ipsis electum ad eandem ecclesiam vacantem. 2. Nominati et praesentati vel ut supra electi, ad vacantes ecclesias, qui earum curam, regimen et administrationem suscipere audent. . . . 3. Ii omnes, qui praemissis paruerint, vel auxilium, consilium aut favorem praestiterint, cujuscunque status, conditionis, praeëminentiae et dignitatis fuerint (supra, n. 287–294 and n. 637, note 33; Konings, n. 1717). A fourteenth, which was added by decision of the S. Poenit., Aug. 4, 1876, is against the members, propagators, adherents, and favorers (in any manner) of the "Societa Cattolica Italiana per la rivendicazione dei diritti spettanti al popolo christiano, ed in ispecie al popolo romano"—a society recently established in Italy for the purpose of giving the Roman people a voice in the election of the Sovereign Pontiff, by means of popular suffrage (Nouv. Rev. Theol., p. 462 seq., livr. 5e., 1876). Hence, as we said (supra, n. 681), there are at present fourteen excommunications reserved, *speciali modo*, to the Roman Pontiff.

Excommunicationes Latae Sententiae Romano Pontifici (simpliciter) Reservatae.

Excommunicationi latae sententiae Romano Pontifici reservatae subjacere declaramus:

I. Docentes vel defendentes sive publice, sive privatim propositiones ab Apostolica Sede damnatas sub excommunicationis poena latae sententiae; item docentes vel defendentes tamquam licitam praxim inquirendi a poenitente nomen complicis prouti damnata est a Benedicto XIV. in Const. *Suprema*, 7 Julii, 1744; *Ubi primum*, 2 Junii, 1746; *Ad eradicandum*, 28 Septembris, 1746.

II. Violentas manus, suadente diabolo, injicientes in clericos, vel utriusque sexus monachos, exceptis quoad reservationem casibus et personis, de quibus jure vel privilegio permittitur, ut episcopus aut alius absolvat.

III. Duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes, et quoslibet complices, vel qualemcumque operam aut favorem praebentes, necnon de industria spectantes, illudque permittentes, vel quantum in illis est, non prohibentes, cujuscumque dignitatis sint, etiam regalis vel imperialis.

IV. Nomen dantes sectae *Massonicae*, aut *Carbonariae*, aut aliis ejusdem generis sectis, qua contra Ecclesiam vel legitimas potestates seu palam seu clandestine machinantur, necnon iisdem sectis favorem qualemcumque praestantes, earumve occultos coryphaeos ac duces non denunciantes, donec denunciaverint.

V. Immunitatem asyli ecclesiastici violare jubentes, aut ausu temerario violantes.

VI. Violantes clausuram monialium, cujuscumque generis aut conditionis, sexus vel aetatis fuerint, in earum monasteria absque legitima licentia ingrediendo; pariterque eos introducentes vel admittentes; itemque moniales ab illa exeuntes extra casus ac formam a S. Pio V. in Constit. *Decori* praescriptam.

VII. Mulieres violantes regularium virorum clausuram, et superiores aliosve eas admittentes.

VIII. Reos simoniae realis in beneficiis quibuscumque, eorumque complices.

IX. Reos simoniae confidentialis in beneficiis quibuslibet, cujuscumque sint dignitatis.

X. Reos simoniae realis ob ingressum in religionem.

XI. Omnes, qui quaestum facientes ex indulgentiis aliisque gratiis spiritualibus, excommunicationis censura plectuntur Constitutione S. Pii V. *Quam plenum*, 2 Januarii, 1554.

XII. Colligentes eleemosynas majoris pretii pro missis, et ex iis lucrum

captantes, faciendo eas celebrari in locis, ubi missarum stipendia minoris pretii esse solent.

XIII. Omnes, qui excommunicatione mulctantur in Constitutionibus S. Pii V., *Admonet nos*, quarto kalendas Aprilis, 1567; Innocentii IX., *Quae ab hac Sede*, pridie nonas Novembris, 1591; Clementis VIII., *Ad Romani Pontificis curam*, 26 Junii, 1592; et Alexandri VII., *Inter ceteras*, nono kalendas Novembris, 1660, alienationem et infeudationem civitatum et locorum S. R. E. respicientibus.

XIV. Religiosos praesumentes clericis aut laicis extra casum necessitatis sacramentum Extremae Unctionis aut Eucharistiae per viaticum ministrare absque parochi licentia.

XV. Extrahentes absque legitima venia reliquias ex sacris coemeteriis sive catacumbis urbis Romae ejusque territorii, eisque auxilium vel favorem praebentes.

XVI. Communicantes cum excommunicato nominatim a Papa in crimine criminoso, ei scilicet impendendo auxilium vel favorem.

XVII. Clericos scienter et sponte communicantes in divinis cum personis a Romano Pontifice nominatim excommunicatis et ipsos in officiis recipientes.[1]

Excommunicationes Latae Sententiae Episcopis sive Ordinariis Reservatae.

Excommunicationi latae sententiae episcopis sive ordinariis reservatae subjacere declaramus:

I. Clericos in sacris constitutos vel regulares aut moniales post votum solemne castitatis matrimonium contrahere praesumentes; necnon omnes cum aliqua ex praedictis personis matrimonium contrahere praesumentes.

II. Procurantes abortum, effectu sequuto.

III. Litteris apostolicis falsis scienter utentes, vel crimini ea in re cooperantes.

Excommunicationes Latae Sententiae Nemini Reservatae.

Excommunicationi latae sententiae nemini reservatae subjacere declaramus:

[1] To the above seventeen cases must be added three additional excommunications—namely, against, 1, absolvere praesumentes sine debita facultate, etiam quovis praetextu, excommunicationis vinculo specialiter reservatae innodatos (supra, excomm. speciali modo R. P. reservatae, xii., § A quibus . . .) 2. Ecclesiasticos et missionarios in Indiis orientalibus mercaturae operam dantes . . . (C. S. O., Dec. 4, 1872). 3. *Adhaerentes* . . . —*i.e.*, those who formally approve internally and externally those crimes which are punished with the twelfth excommunication reserved, *speciali modo*, to the Pope (Encycl Pii PP. IX., Nov. 1, 1870, ap. Konings, n. 1732). Altogether, therefore, there are now, as we have elsewhere (supra, n. 681) said, twenty excommunications reserved *simpliciter* to the Holy See.

I. Mandantes seu cogentes tradi ecclesiasticae sepulturae haereticos notorios aut nominatim excommunicatos vel interdictos.

II. Laedentes aut perterrefacientes inquisitores, denuntiantes, testes, aliosve ministros S. Officii, ejusve sacri tribunalis scripturas diripientes, aut comburentes, vel praedictis quibuslibet auxilium, consilium, favorem praestantes.

III. Alienantes et recipere praesumentes bona ecclesiastica absque beneplacito apostolico, ad formam extravagantis *Ambitiosae*, De Reb. Ecc. non alienandis.

IV. Negligentes sive culpabiliter omittentes denunciare infra mensem confessarios sive sacerdotes, a quibus sollicitati fuerint ad turpia in quibuslibet casibus expressis a Praedecess. Nostris Gregorio XV. Constit. *Universi*, 20 Augusti, 1622, et Benedicto XIV. Constit. *Sacramentum poenitentiae*, 1 Junii, 1741.

Praeter hos hactenus recensitos, eos quoque, quos sacrosanctum Concilium Tridentinum, sive reservata Summo Pontifici aut ordinariis absolutione, sive absque ulla reservatione excommunicavit, nos pariter excommunicatos esse declaramus; excepta anathematis poena in Decreto sess. iv. *De editione et usu Sacrorum Librorum* constituta, cui illos tantum subjacere volumus, qui libros de rebus sacris tractantes sine ordinarii approbatione imprimunt, aut imprimi faciunt.

Suspensiones Latae Sententiae Summo Pontifici Reservatae.

I. Suspensionem ipso facto incurrunt a suorum beneficiorum perceptione ad beneplacitum S. Sedis capitula et conventus ecclesiarum et monasteriorum aliique omnes, qui ad illarum seu illorum regimen et administrationem recipiunt episcopos aliosve praelatos de praedictis ecclesiis seu monasteriis apud eamdem S. Sedem quovis modo provisos, antequam ipsi exhibuerint litteras apostolicas de sua promotione.

II. Suspensionem per triennium a collatione ordinum ipso jure incurrunt aliquem ordinantes absque titulo beneficii vel patrimonii cum pacto, ut ordinatus non petat ab ipsis alimenta.

III. Suspensionem per annum ab ordinum administratione ipso jure incurrunt ordinantes alienum subditum etiam sub praetextu beneficii statim conferendi, aut jam collati, sed minime sufficientis, absque ejus episcopi litteris dimissorialibus, vel etiam subditum proprium, qui alibi tanto tempore moratus sit, ut canonicum impedimentum contrahere ibi potuerit, absque ordinarii ejus loci litteris testimonialibus.

IV. Suspensionem per annum a collatione ordinum ipso jure incurrit, qui excepto casu legitimi privilegii, ordinem sacrum contulerit absque titulo beneficii vel patrimonii clerico in aliqua congregatione viventi, in qua solemnis professio non emittitur, vel etiam religioso nondum professo.

V. Suspensionem perpetuam ab exercitio ordinum ipso jure incurrunt religiosi ejecti, extra religionem degentes.

VI. Suspensionem ab ordine suscepto ipso jure incurrunt, qui eumdem ordinem recipere praesumpserunt ab excommunicato vel suspenso, vel interdicto nominatim denunciatis, aut ab haeretico vel schismatico notorio: eum vero, qui bona fide a quopiam eorum est ordinatus, exercitium non habere ordinis sic suscepti, donec dispensetur, declaramus.

VII. Clerici saeculares exteri ultra quatuor menses in urbe commorantes, ordinati ab alio quam ab ipso suo ordinario absque licentia Card. Urbis Vicarii, vel absque praevio examine coram eodem peracto vel etiam a proprio ordinario, posteaquam in praedicto examine rejecti fuerint; necnon clerici pertinentes ad aliquem e sex episcopatibus suburbicariis, si ordinentur extra suam dioecesim, dimissorialibus sui ordinarii ad alium directis quam ad Card. Urbis Vicarium; vel non praemissis ante ordinem sacrum suscipiendum exercitiis spiritualibus per decem dies in domo urbana sacerdotum a missione nuncupatorum, suspensionem ab ordinibus sic susceptis ad beneplacitum S. Sedis ipso jure incurrunt, episcopi vero ordinantes ab usu Pontificalium per annum.

Interdicta Latae Sententiae Reservata.

I. Interdictum Romano Pontifici speciali modo reservatum ipso jure incurrunt universitates, collegia et capitula, quocumque nomine nuncupentur, ab ordinationibus seu mandatis ejusdem Romani Pontificis pro tempore existentis ad universale futurum concilium appellantia.

II. Scienter celebrantes vel celebrari facientes divina in locis ab ordinario, vel delegato judice, vel a jure interdictis, aut nominatim excommunicatos ad divina officia, seu ecclesiastica sacramenta, vel ecclesiasticam sepulturam admittentes, interdictum ab ingressu Ecclesiae ipso jure incurrunt, donec ad arbitrium ejus, cujus sententiam contempserunt, competenter satisfecerint.

Denique quoscumque alios sacrosanctum Concilium Tridentinum suspensos aut interdictos ipso jure esse decrevit, nos pari modo suspensioni vel interdicto eosdem obnoxios esse volumus et declaramus.

Quae vero censurae sive excommunicationis, sive suspensionis, sive interdicti nostris aut praedecessorum nostrorum constitutionibus, aut sacris canonibus praeter eas, quas recensuimus, latae sunt, atque hactenus in suo vigore perstiterunt sive pro R. Pontificis electione, sive pro interno regimine quorumcumque ordinum et institutorum regularium, necnon quorumcumque collegiorum, congregationum, coetuum locorumque piorum cujuscumque nominis aut generis sint, eas omnes firmas esse, et in suo robore permanere volumus et declaramus.

Ceterum decernimus, in novis quibuscumque concessionibus ac privilegiis, quae ab Apostolica Sede concedi cuivis contigerit, nullo modo ac

ratione intelligi unquam debere, aut posse comprehendi facultatem absolvendi a casibus et censuris quibuslibet Romano Pontifici reservatis, nisi de iis formalis, explicita ac individua mentio facta fuerit: quae vero privilegia aut facultates, sive a praedecessoribus nostris, sive etiam a nobis cuilibet coetui, ordini, congregationi, societati et instituto, etiam regulari cujusvis speciei, etsi titulo peculiari praedito, atque etiam speciali mentione digno a quovis unquam tempore huc usque concessae fuerint, ea omnia, easque omnes nostra constitutione revocatas, suppressas, et abolitas esse volumus, prout reapse revocamus, supprimimus et abolemus, minime refragantibus aut obstantibus privilegiis quibuscumque, etiam specialibus comprehensis, vel non in corpore juris, aut apostolicis constitutionibus, et quavis confirmatione apostolica, vel immemorabili etiam consuetudine, aut alia quacumque firmitate roboratis, quibuslibet etiam formis ac tenoribus, et cum quibusvis derogatoriarum derogatoriis, aliisque efficacioribus et insolitis clausulis, quibus omnibus, quatenus opus sit, derogare intendimus, et derogamus.

Firmam tamen esse volumus absolvendi facultatem a Tridentina Synodo episcopis concessam, sess. xxiv., cap. vi., *De Reform.*, in quibuscumque censuris Apostolicae Sedi hac nostra Constitutione reservatis, iis tantum exceptis, quas eisdem Apostolicae Sedi speciali modo reservatas declaravimus.

Decernentes has litteras, atque omnia et singula, quae in eis constituta ac decreta sunt, omnesque et singulas, quae in eisdem factae sunt ex anterioribus constitutionibus praedecessorum nostrorum, atque etiam nostris, aut ex aliis sacris canonibus quibuscumque, etiam Conciliorum Generalium, et ipsius Tridentini mutationes, derogationes, suppressiones atque abrogationes ratas et firmas, ac respective rata atque firma esse et fore, suosque plenarios et integros effectus obtinere debere, ac reapse obtinere; sicque et non aliter in praemissis per quoscumque judices ordinarios, et delegatos, etiam causarum Palatii Apostolici auditores, ac S. R. E. cardinales, etiam de latere legatos, ac Apostolicae Sedis nuntios, ac quovis alios quacumque praeeminentia ac potestate fungentes, et functuros, sublata eis, et eorum cuilibet quavis aliter judicandi et interpretandi facultate et auctoritate, judicari ac definiri debere; et irritum atque inane esse ac fore quidquid super his a quoquam quavis auctoritate, etiam praetextu cujuslibet privilegii, aut consuetudinis inductae vel inducendae, quam abusum esse declaramus, scienter vel ignoranter contigerit attentari.

Non obstantibus praemissis, aliisque quibuslibet ordinationibus, constitutionibus, privilegiis, etiam speciali et individua mentione dignis, necnon consuetudinibus quibusvis, etiam immemorabilibus, ceterisque contrariis quibuscumque.

Nulli ergo omnino hominum liceat hanc paginam nostrae constitutionis, ordinationis, limitationis, suppressionis, derogationis, voluntatis infringere,

vel ei ausu temerario contraire. Si quis autem hoc attentare praesumpserit, indignationem Omnipotentis Dei et Beatorum Petri et Pauli, apostolorum ejus, se noverit incursurum.

Datum Romae apud S. Petrum anno incarnationis Dominicae millesimo octingentesimo sexagesimo nono, quarto idus Octobris, Pontificatus nostri anno vigesimo quarto.

MARIUS CARD. MATTEI, *Pro-Datarius.*
N. CARD. PARACCIANI CLARELLI.
Visa de Curia: DOMINICUS BRUTI.
Loco + Plumbi. J. CUGNONI.

II.

DECISIO S. POENITENTIARIAE CIRCA JEJUNIUM.

EMINENTISSIME PRINCEPS: Quidam sacerdotes regnorum Belgii et Hollandiae, ad tranquillitatem conscientiae suae et ad certam fidelium directionem, instanter petunt ab Eminentia Vestra solutionem sequentium dubiorum:

Gury, Scavini et alii referunt tanquam responsa S. Poenitentiariae data die 16 Jan., 1834:

"Posse personis quae sunt in potestate patrisfamilias, cui facta est legitima facultas edendi carnes, permitti uti cibis patrifamilias indultis, abjecta conditione de non permiscendis licitis atque interdictis epulis et de unica comestione in die, iis qui jejunare tenentur."

Igitur quaeritur: 1. An haec resolutio valeat ubique terrarum? 2. Dum dicitur *permitti posse*, petitur a quo ista permissio danda sit, et an sufficiat permissio data a simplici confessario?

Altera resolutio: "Fideles qui ratione aetatis vel laboris jejunare non tenentur, licite posse in Quadragesima, dum indultum concessum est, omnibus diebus indulto comprehensis, vesci carnibus aut lacticiniis per idem indultum permissis, quoties per diem edunt."

Dubitatur igitur an haec resolutio valeat in dioecesi cujus episcopus auctoritate apostolica concedit fidelibus ut, feria 2a, 3a, 5a temporis Quadragesimae, possint semel in die vesci carnibus et ovis, iis vero qui ratione aetatis vel laboris jejunare non tenentur, permittit ut ovis saepius in die utantur.

Quaeritur itaque: 1. An non obtantibus memorata phrasi *ovis saepius in die utantur*, et tenore concessionis, possint ii, qui ratione aetatis vel laboris jejunare non tenentur, vi dictae resolutionis vesci carnibus quoties per diem edunt? 2. An iis, qui jejunare non tenentur ratione aetatis vel laboris, aequiparandi sint qui ratione infirmiae valetudinis a jejunio excusantur, adeo ut istis quoque pluries in die vesci carnibus liceat?

S. Poenitentiaria, mature consideratis propositis dubiis, dilecto in Christo oratori in primis respondet transmittendo declarationem ab ipsa S. Poenitentiaria alias datam, scilicet: "Ratio permissionis de qua in resolutione data a S. Poenitentiaria, 16 Januarii, 1834, non est indultum patrifamilias concessum, sed impotentia, in qua versantur filiifamilias, observandi praeceptum."

Deinde ad duo priora dubia respondet: Quoad primum, *affirmative.* Quoad secundum, *sufficere permissionem factam a simplici confessario.*

Ad duo vero posteriora dubia respondet: Quoad primum, *negative;* quod secundum, *non aequiparari.*

Datum Romae in S. Poenitentiaria, die 27 Maii, 1863.

A.-M. Card. Cagiano, *M. P.*

III.

INSTRUCTIO DE SCHOLIS PUBLICIS AD RMOS EPISCOPOS IN FOEDERATIS STATIBUS AMERICAE SEPTEMTRIONALIS.

Pluries S. Congregatio de Propaganda Fide certior facta est in Foederatis Statibus Americae Septemtrionalis Catholicae juventuti e sic dictis scholis publicis gravissima damna imminere. Tristis quocirca hic nuntius effecit, ut praedicta S. Congregatio amplissimis istius ditionis episcopis nonnullas quaestiones proponendas censuerit, quae partim ad causas cur fideles sinant liberos suos scholas acatholicas frequentare, partim ad media quibus facilius juvenes e scholis hujusmodi arceri possint, spectabant. Porro responsiones a laudatis episcopis exaratae ad Supremam Congregationem Universalis Inquisitionis pro natura argumenti delatae sunt, et negotio diligenter explorato Feria IV., die 30 Junii, 1875, per instructionem sequentem absolvendum ab Emis. Patribus judicatum est, quam exinde SS. Dnus. Noster Feria IV., die 24 Novembris praedicti anni adprobare ac confirmare dignatus est.

Porro in deliberatione imprimis cadere debebat ipsa juventutis instituendae ratio scholis hujusmodi propria atque peculiaris. Ea vero S. Congregationi visa est etiam ex se periculi plena, ac perquam adversa rei catholicae. Alumni enim talium scholarum cum propria earumdem ratio omnem excludat doctrinam religionis, neque rudimenta fidei addiscent, neque Ecclesiae instruentur praeceptis, atque adeo carebunt cognitione homini quam maxime necessaria, sine qua Christiane non vivitur. Enimvero in ejusmodi scholis juvenes educantur jam inde a prima pueritia, ac propemodum a teneris unguiculis: qua aetate, ut constat, virtutis ac vitii semina tenaciter haerent. Aetas igitur tam flexibilis si absque religione adolescat, sane ingens malum est. Porro

autem in praedictis scholis, utpote sejunctis ab Ecclesiae auctoritate, indiscriminatim ex omni secta magistri adhibentur, et certeroquin ne perniciem afferant juventuti nulla lege cautum est, ita ut liberum sit errores et vitiorum semina teneris mentibus infundere. Certa item corruptela insuper ex hoc impendet, quod in iisdem scholis aut saltem pluribus earum, utriusque sexus adolescentes, et audiendis lectionibus in idem conclave congregantur, et sedere in eodem scamno, masculi juxta feminas jubentur: quae omnia efficiunt ut juventus misere exponatur damno circa fidem, ac mores periclitentur. Hoc autem periculum perversionis nisi e proximo remotum fiat, tales scholae tuta conscientia frequentari nequeunt. Id vel ipsa clamat lex naturalis et divina. Id porro claris verbis Summus Pontifex edixit, Friburgensi quondam Archiepiscopo die 14 Julii, 1864, ita scribens: *Certe quidem ubi in quibuscumque locis regionibusque perniciosissimum hujusmodi vel susciperetur, vel ad exitum perduceretur consilium expellendi a scholis Ecclesiae auctoritatem, et juventus misere exponeretur damno circa fidem, tunc Ecclesia non solum deberet instantissimo studio omnia conari, nullisque curis parcere, ut eadem juventus necessariam Christianam institutionem, et educationem habeat, verum etiam cogeretur omnes fideles monere, eisque declarare ejusmodi scholas Ecclesiae Catholicae adversas haud posse in conscientia frequentari.* Et haec quidem utpote fundata jure naturali ac divino, generale quoddam enunciant principium, vimque universalem habent, et ad eas omnes pertinent regiones, ubi perniciosissima hujusmodi juventutis instituendae ratio infeliciter invecta fuerit. Oportet igitur ut praesules amplissimi, quacumque possint ope atque opera, commissum sibi gregem arceant ab omni contagione scholarum publicarum. Est autem ad hoc, omnium consensu, nil tam necessarium, quam ut Catholici ubique locorum proprias sibi scholas habeant, easque publicis scholis haud inferiores. Scholis ergo Catholicis, sive condendis, ubi defuerint, sive amplificandis, et perfectius instruendis parandisque, ut institutione ac disciplina scholas publicas adaequent, omni cura prospiciendum est. Ac tam sancto quidem exequendo consilio, tamque necessario haud inutiliter adhibebuntur, si episcopis visum fuerit, e congregationibus religiosis sodales sive viri sive mulieres; sumptusque tanto operi necessarii ut eo libentius atque abundantius suppeditentur a fidelibus, opportune oblata occasione, sive concionibus, sive privatis colloquiis, serio necesse est, ut ipsi commonefiant sese officio suo graviter defecturos, nisi omni qua possunt cura, impensaque, scholis Catholicis provideant. De quo potissimum monendi erunt quotquot inter Catholicos ceteris praestant divitiis ac auctoritate apud populum, quique comitiis ferendis legibus sunt adscripti. Et vero in istis regionibus nulla obstat lex civilis quominus Catholici, ut ipsis visum fuerit, propriis scholis prolem suam ad omnem scientiam ac pietatem erudiant. Est ergo in potestate positum ipsius populi Catholici ut feliciter avertatur clades, quam scholarum illic publicarum institutum rei Catholicae minatur. Religio autem ac pietas ne a scholis vestris expellantur, id omnes persuadeant sibi plurimum interesse, non singulorum tantum civium ac

familiarum, verum etiam ipsius florentissimae Americanae nationis, quae tantam de se spem Ecclesiae dedit.

Ceterum S. Congregatio non ignorat talium interdum rerum esse adjuncta, ut parentes Catholici prolem suam scholis publicis committere in conscientia possint. Id autem non poterunt, nisi ad sic agendum sufficientem causam habeant; ac talis causa sufficiens in casu aliquo particulari utrum adsit necne, id conscientiae ac judicio Episcoporum relinquendum erit; et juxta relata tunc ea plerumque aderit, quando vel nulla praesto est schola Catholica, vel quae suppetit parum est idonea erudiendis convenienter conditioni suae, congruenterque adolescentibus.

Quae autem ut scholae publicae in conscientia adiri possint, periculum perversionis cum propria ipsarum ratione plus minusve nunquam non conjunctum, opportunis remediis cautionibusque, fieri debet ex proximo remotum. Est ergo imprimis videndum utrumne in schola, de qua adeunda quaeritur, perversionis periculum sit ejusmodi, quod fieri remotum plane nequeat: velut quoties ibi aut docentur quaedam, aut aguntur, Catholicae doctrinae bonisve moribus contraria, quaeque citra animae detrimentum, neque audiri possunt, nedum peragi. Enimvero tale periculum, ut per se patet, omnino vitandum est quocumque damno etiam vitae.

Debet porro juventus ut committi scholis publicis in conscientia possit, necessariam Christianam institutionem et educationem saltem extra scholae tempus rite ac diligentere accipere. Quare parochi et missionarii, memores eorum, quae providentissime hac de re Concilium Baltimorense constituit, catechesibus diligenter dent operam, iisque explicandis praecipue incumbant veritatibus fidei ac morum, quae magis ab incredulis et heterodoxis impetuntur; totque periculis expositam juventutem impensa cura, qua frequenti sacramentorum usu, qua pietate in Beatam Virginem studeant communire, et ad religionem firmiter tenendam etiam atque etiam excitent. Ipsi vero parentes, quive eorum loco sunt, liberis suis sollicite invigilent, ac vel ipsi per se, vel, si minus idonei ipsi sint, per alios, de lectionibus auditis eos interrogent, libros iisdem traditos recognoscant, et si quid noxium ibi deprehenderint, antidota praebeant, eosque a familiaritate et consortio condiscipulorum, a quibus fidei vel morum periculum imminere possit, seu quorum corrupti mores fuerint, omnino arceant atque prohibeant.

Hanc autem necessariam Christianam institutionem et educationem liberis suis impertire quotquot parentes negligunt: aut qui frequentare illos sinunt tales scholas, in quibus animarum ruina evitari non potest: aut tandem qui, licet schola Catholica in eodem loco idonea sit, apteque instructa et parata, seu quamvis facultatem habeant in alia regione prolem Catholice educandi, nihilominus committunt eam scholis publicis, sine sufficiente causa ac sine necessariis cautionibus, quibus periculum perversionis e proximo remotum fiat: eos, si contumaces fuerint, absolvi non posse in sacramento poenitentiae ex doctrina morali Catholica manifestum est.

IV.

THE SYMBOL OF POPE PIUS IV., AS AMENDED BY POPE PIUS IX.

(*β*), n. 326, 664.

DECRETUM.

Quod a priscis Ecclesiae temporibus semper fuit in more, ut christifidelibus certa proponeretur ac determinata formula, qua fidem profiterentur, atque invalescentes cujusque aetatis haereses solemniter detestarentur, idipsum, sacrosancta Tridentina Synodo feliciter absoluta, sapienter praestitit Summus Pontifex Pius IV., qui Tridentinorum Patrum decreta incunctanter exequi properans, edita Idibus Novembris, 1564, Constitutione *Injunctum Nobis*, formam concinnavit professionis fidei recitandam ab iis, qui cathedralibus et superioribus Ecclesiis praeficiendi forent, quive illarum dignitates, canonicatus, aliaque beneficia ecclesiastica quaecumque curam animarum habentia essent consecuturi, et ab omnibus aliis, ad quos ex decretis ipsius concilii spectat: necnon ab iis, quos de monasteriis, conventibus, domibus, et aliis quibuscumque locis regularium quorumcumque ordinum, etiam militarium, quocumque nomine vel titulo provideri contingeret. Quod et alia Constitutione edita eodem die et anno incipiente *In sacrosancto*, salubriter praeterea extendit ad omnes doctores, magistros, regentes, vel alios cujuscumque artis et facultatis professores, sive clericos sive laicos, vel cujusvis ordinis regularis, quibuslibet in locis publice vel privatim quoquomodo profitentes, seu lectiones aliquas habentes vel exercentes, ac tandem ad ipsos hujusmodi gradibus decorandos.

Jam vero, cum postmodum coadunatum fuerit sacrosanctum Concilium Vaticanum, et ante ejus suspensionem per Literas Apostolicas *Postquam Dei Munere* diei 20 Octobris, 1870, indictam, binae ab eodem solemniter promulgatae sint dogmaticae Constitutiones, prima scilicet de Fide Catholica, quae incipit *Dei Filius*, et altera de Ecclesia Christi, quae incipit *Pastor aeternus*, non solum opportunum, sed etiam necessarium dijudicatum est, ut in fidei professione dogmaticis quoque praememorati Vaticani Concilii definitionibus, prout corde, ita et ore publica solemnisque fieri deberet adhaesio. Quapropter Sanctissimus D. N. Pius Papa IX., exquisito ea desuper re voto specialis Congregationis Emorum S. R. E. Patrum Cardinalium, statuit, praecepit, atque mandavit, ceu per praesens decretum praecipit, ac mandat, ut in praecitata Piana formula professionis fidei, post verba "praecipue a sacrosancta Tridentina Synodo" dicatur "*et ab Oecumenico Concilio Vaticano tradita, definita ac declarata, praesertim de Romani Pontificis Primatu et Infallibili Magisterio*" utque in posterum fidei professio ab omnibus, qui eam emittere tenentur, sic et

non aliter emittatur, sub comminationibus ac poenis a Concilio Tridentino et a supradictis Constitutionibus S. M. Pii IV. statutis. Id igitur ubique, et ab omnibus, ad quos spectat, diligenter ac fideliter observetur, non obstantibus, etc.

Datum Romae e Secretaria S. Congregationis Concilii die 20 Januarii, 1877.

P. Card. Caterini, *Praefectus.*

J. Archiepiscopus Ancyranus, *Secretarius.*

THE EMENDED PARAGRAPH.

The paragraph in the Creed of Pope Pius IV., amended by the above decree so as to include a profession of faith in the Dogmatic Constitutions of the Council of the Vatican, especially as regards the Primacy and Infallibility, therefore runs as follows :

Caetera item omnia a sacris canonibus et Oecumenicis Conciliis, ac praecipue a sacrosancta Tridentina Synodo, *et ab Oecumenico Concilio Vaticano tradita, definita ac declarata, praesertim de Romani Pontificis Primatu et Infallibili Magisterio,* indubitanter recipio atque profiteor; simulque contraria omnia, atque haereses quascumque ab Ecclesia damnatas et rejectas et anathematizatas ego pariter damno, rejicio, et anathematizo. Hanc veram Catholicam Fidem, extra quam nemo salvus esse potest, quam in praesenti sponte profiteor et veraciter teneo, eamdem integram et immaculatam usque ad extremum vitae spiritum, constantissime, Deo adjuvante, retinere et confiteri, atque a meis subditis seu illis, quorum cura ad me in munere meo spectabit, teneri et doceri et praedicari, quantum in me erit, curaturum, ego, idem N. spondeo, voveo ac juro. Sic me Deus adjuvet, et haec Sancta Dei Evangelia.

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ADDENDA.

Page 22, line 2 from bottom.—After "enforced" add: If the Pope should, nevertheless, insist on his law being observed, he must be obeyed.

P. 24, l. 17 f. above.—After "is" add: especially at present.

P. 29, l. 5 f. a.—After "laws" add: which they have also when inserted in the *Corpus Juris*.

P. 29, l. 7 f. a.—After "contra legem" add: as those granting exemptions.

P. 29, l. 8 f. a.—After "praeter legem" add: as those which bestow favors—*v.g.*, to bless rosaries, etc.

P. 29, l. 8 f a.—After "secundum legem" add: as those giving favorable interpretations of the law.

P. 30, l. 3 f. a.—After "consequantur" add: This holds at least of *rescripta justitia*.

P. 30, l. 13 f. a.—After "*solent*" add: at present, however, the practice of committing only to doctors of theology or canon law, or to dignitaries, the execution of rescripts authorizing the giving of a dispensation from an impediment of marriage has been done away with, at least so far as concerns rescripts of the *S. Poenitentiaria*. Simple confessors are now frequently empowered to do so.

P. 101, l. 17 f. a.—After "causarum" insert: and that in view of his office (*tanquam per officium*).

P. 111, l. 3 f. b.—After "Holy See" add: Some, however, think that bishops in the United States, as elsewhere, can make pastors irremovable without any permission from the Holy See; that, moreover, the doing so in the U. S. is not a *causa major*.

P. 118, l. 7 f. a.—After "unite" add: provided the jurisdiction of the bishop be not infringed thereby. Hence, the vicar-capitular can do so only provisionally. Devoti (lib. i., tit. iii., n. 65), however, and others, hold that vicars-capitular have no power whatever to unite churches or benefices.

P. 132, l. 17 f. a.—After "religious" add: bound by solemn vows.

P. 185, l. 5 f. b.—After "inform" add: at least by leaving a note with the sick person.

P. 249, l. 1 f. b.—After "Propaganda" add: at least as the organ of communication; for the decision, or dispensation itself, is sometimes given by another congregation charged with the specific matter.

P. 250, l. 11 f. a.—After "solves" add: or causes to be solved—namely, by one of the other congregations charged with the particular affair.

P. 268, l. 17 f. a.—After "dispensation" add: grantable by him *jure proprio*.

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